

ANUJ KUMAR GUPTA @ SETHI GUPTA

v.

STATE OF BIHAR

(Criminal Appeal No. 1575 of 2009)

JULY 24, 2013

**[A.K. PATNAIK AND FAKKIR MOHAMED
IBRAHIM KALIFULLA, JJ.]**

Penal Code, 1860 – ss.302 and 201 – Death of PW-6's son – Dead body recovered from river – Circumstantial evidence – Confessional statement made by accused-appellant to Investigating officer PW-9 – Conviction of appellant by Courts below – Justification – Held: Justified – From the evidence of PW-9, supported by version of PW-4 (uncle of deceased), it is clear that at the instance of the appellant and a co-accused, the body of deceased was recovered from a river stream – There were signs of marks on the neck of the deceased – The identity of the place where the dead body was lying, which was exclusively within the knowledge of the appellant, was certainly admissible by virtue of the application of s.8, r/w s.27 of the Evidence Act – In absence of any convincing explanation on behalf of the appellant as to under what circumstances he was able to lead the Police party to the place where the dead body was found, such recovery would act deadly against the appellant considered alongwith the rest of the circumstances demonstrated by the prosecution – Chain of circumstances complete in every respect in order to lead to the only conclusion that the appellant was squarely responsible for killing of the deceased – Evidence Act, 1872 – s.8 r/w s.27 – Applicability of.

Based on the confessional statement made by accused-appellant before PW9, the Investigating Officer, the dead body of PW-6's son was recovered from a river.

- A Apart from appellant, there were three other accused. The trial Court convicted the appellant and one co-accused 'A' under Sections 364(A), 302, 201 and 120-B, IPC and imposed death penalty on them. The other two co-accused were acquitted. The High Court upheld the conviction of appellant under Sections 302 and 201 IPC but acquitted him of the charges under Section 364 and 120-B IPC. While affirming conviction, the High Court commuted the death sentence imposed upon the appellant to imprisonment for life for the offence under Section 302 IPC. The co-accused 'A' was however acquitted of all the charges.

D In the instant appeal, it was contended by the appellant that merely based on the confessional statement of the appellant to PW-9, the Investigating officer, he was convicted and the same was not in consonance with law.

Dismissing the appeal, the Court

- E HELD: 1.1. According to PW-9, he recorded the confession of the appellant. Though PW-9 would refer to very many statements alleged to have been admitted by the appellant and co-accused 'A', the only part of the admission, which can be noted and accepted as admissible in the evidence related to the identification of the place where the dead body of PW6's son was found, based on the admission of the appellant and the co-accused. From the evidence of PW-9, supported by the version of PW-4, it has come to light that at the instance of the appellant and the co-accused 'A', the body of the deceased was recovered from Maldiha Dhar (river stream) and that at that time the eyes of the dead body and the tongue were protruding out. There were also signs of marks on the neck of the deceased. The identity of the place at the instance of the appellant and the co-accused, as to where the dead body of the deceased was

lying, which was exclusively within the knowledge of the appellant, was certainly admissible by virtue of the application of Section 8, read along with Section 27 of the Evidence Act. [Paras 13, 15] [444-C, D-E; 445-C-F]

1.2. In absence of any convincing explanation on behalf of the appellant accused as to under what circumstances he was able to lead the Police party to the place where the dead body of the deceased was found, it will have to be held that such recovery of the dead body, which is a very clinching circumstance in the case of this nature, would act deadly against the appellant considered along with rest of the circumstances demonstrated by the prosecution to rope in the appellant in the alleged crime of the killing of the deceased. Though the above incriminating circumstance was put to the appellant in the 313 questioning where he had an opportunity to explain, except a mere denial there was no other convincing explanation offered by him. [Para 16] [445-F-H; 446-B-C]

Bheru Singh v. State of Rajasthan (1994) 2 SCC 467: 1994 (1) SCR 559; *Sandeep v. State of Uttar Pradesh* 2012 (6) SCC 107: 2012 (5) SCR 952 – referred to.

2. Besides, there were other circumstances which were considered by the trial Court, as well as the High Court. The said circumstances having been found to be fully established, the conclusion of the trial Court, as well that of the High Court in holding that the chain of circumstances was complete in every respect in order to lead to the only conclusion that the appellant was squarely responsible for the killing of the deceased, was well justified. The ultimate conviction of the appellant under Section 302 of IPC and the sentence of life imprisonment imposed on him by commuting the death penalty imposed by the trial Court, was perfectly justified. [Paras 17, 18] [446-D; 447-G-H; 448-B-C]

A Case Law Reference:

1994 (1) SCR 559 referred to Para 11

2012 (5) SCR 952 referred to Para 12

B CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1575 of 2009.

From the Judgment and Order dated 02.11.2007 of the High Court of Patna in CRLA No. 690 of 2005.

C Rakhi Ray, (AC), Vaibhav Gulia, S.S. Ray, for the Appellant.

Chandan Kumar, Gopal Singh, for the Respondent.

The Judgment of the Court was delivered by

D FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. This appeal is directed against the judgment of the High Court of Patna at Bihar dated 02.11.2007, passed in Criminal Appeal No.690 of 2005. The said appeal was disposed of along with E Criminal Appeal No.606/2005, as well as Death Reference No.8 of 2005.

F 2. To trace the brief facts, the deceased Chhotu Kumar Das @ Abhinav Das (hereinafter referred to as 'Chhotu') son of the informant Gopal Prasad Das (PW-6), left his house on 21.04.2002 at about 8.15 p.m., for visiting a local *Mela*, which was held every year in the village on the eve of Ram Navami. Thereafter, he could not be traced inspite of a search by his parents and, therefore, a written report was submitted by PW-6 at the police station on 22.04.2002 at 10.30 a.m. briefly G narrating the circumstances in which the deceased could not be traced. No suspicion was raised against any person for the disappearance of the deceased.

H 3. Based on the written report, the police registered the FIR in P.S. Case No.39/2002 and proceeded with the

A 2005. The High Court by the judgment impugned, while upholding the conviction imposed on the appellant held that no offence was made out as against Arun Mandal and he was acquitted of all the charges. As far as the appellant was concerned, while affirming the conviction, the High Court
B commuted the death sentence to imprisonment for life for the offence under Section 302 IPC and held that there was no sufficient evidence to hold him guilty of the charge under Section 364 and 120-B IPC. He was found guilty of charges under Sections 302 and 201 IPC.

C 6. We heard Ms. Rakhi Ray, Amicus Curiae for the appellant and Mr. Sanat Tokas, learned counsel representing Mr. Gopal Singh, learned counsel for the State. Learned counsel for the appellant in her submissions was mainly contending that this case being one purely based on
D circumstantial evidence, the reliance placed upon by the trial Court, as well the High Court on the confessional statement of the appellant made to the investigating officer PW-9 cannot stand and, therefore, the conviction and sentence imposed on the appellant is liable to be set aside. The learned counsel was
E not able to address any other submission, while attacking the judgment impugned in this appeal.

F 7. Learned counsel for the State would contend that the trial Court, as well as the High Court have gathered the chain of circumstances, which led to the killing of the deceased by the appellant and since the chain of circumstances was complete in every respect, the conviction and sentence imposed on the appellant does not call for interference. Learned counsel for the State also contended that the trial Court, as well
G as the High Court have only placed reliance on the admissible portion of the confessional statement of the appellant made to PW-9, the investigating officer.

H 8. Having considered the respective submissions of the learned counsel and having perused the judgment of the Division Bench, as well as the trial Court and all other material

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investigation. The investigation was carried out by PW-9, the Sub-Inspector of Police. In the course of the investigation, he came across some suspicious materials against the appellant by some of the witnesses. PW-9, therefore, interrogated the appellant on 22.04.2002, whereafter he was arrested. The appellant made a confessional statement before the police on 23.04.2002 and based on the admissible portion of the said confessional statement, the dead body of the deceased was recovered from a river known as Maldiha Dhar. The co-accused Arun Mandal @ Arun Kumar Mandal was also arrested, while another accused Sudhir Kumar Mandal could not be apprehended on that day. The inquest of the body was prepared on 24.4.2002 at 5.00 p.m. and the postmortem was conducted by PW-10. It was based on the above investigation, the prosecution proceeded against the appellant along with the other accused, namely, Girendra Gupta, Arun Mandal and Sudhir Mandal for offences under Sections 364(A), 302, 201 and 120-B IPC.

4. The appellant and the co accused pleaded innocence and the trial Court proceeded with the case. The prosecution examined PWs-1 to 10 on their side. In the 313 questioning, the appellant and the other accused made a total denial. The trial Court based on the evidence placed before it reached the conclusion that the appellant and the co-accused Arun Mandal, were guilty of the offences falling under Sections 364(A), 302, 201 and 120-B, IPC and imposed death penalty on them and in the light of the said sentence held that no separate sentence was passed against them. The other accused, namely, Girendra Gupta and Sudhir Mandal, were acquitted of all the offences charged against them.

5. By virtue of the death penalty imposed, the Death Reference No.8 of 2005 came to be dealt with by the High Court along with the appeals preferred by the appellant being Criminal Appeal No.690/2005 and the other appeal preferred by the co-accused Arun Mandal in Criminal Appeal No.606/

A begun. The expression "accused of any offence" in Section
 25 would cover the case of an accused who has since
 been put on trial, whether or not at the time when he made
 the confessional statement, he was under arrest or in
 custody as an accused in that case or not. Inadmissibility
 B of a confessional statement made to a police officer under
 Section 25 of the Evidence Act is based on the ground of
 public policy. Section 25 of the Evidence Act not only bars
 proof of admission of an offence by an accused to a police
 officer or made by him while in the custody of a police
 C officer but also the admission contained in the
 confessional statement of all incriminating facts relating to
 the commission of an offence. Section 26 of the Evidence
 Act deals with partial ban to the admissibility of
 confessions made to a person other than a police officer
 but we are not concerned with it in this case. *Section 27*
 D *of the Evidence Act is in the nature of a proviso or an*
exception, which partially lifts the ban imposed by
Sections 25 and 26 of the Evidence Act and makes
admissible so much of such information, whether it
amounts to a confession or not, as relates to the fact
 E *thereby discovered, when made by a person accused of*
an offence while in police custody. Under Section 164
 CrPC a statement or confession made in the course of an
 investigation, may be recorded by a Magistrate, subject
 to the safeguards imposed by the section itself and can
 F be relied upon at the trial.

19. From a careful perusal of this first information report
 we find that it discloses the motive for the murder and the
 manner in which the appellant committed the six murders.
 G The appellant produced the bloodstained sword with which
 according to him he committed the murders. In our opinion
 the first information report Ex. P-42, however is not a wholly
 confessional statement, but only that part of it is
 admissible in evidence which does not amount to a
 confession and is not hit by the provisions of Section 25
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papers, we find that the only contention of the learned counsel for the appellant was that merely based on the confessional statement of the appellant to PW-9, the Investigating officer, the conviction came to be imposed and the same was not in consonance with law.

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9. When we examine the case on hand, we find that there was no eye witness to the occurrence. The whole case is based on the circumstantial evidence, therefore, our only endeavour is to find out whether the chain of circumstance noted by the trial Court, as well as the High Court was complete without any disruption in order to confirm the conviction and sentence imposed on the appellant.

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10. As far as the admissibility of the confessional statement made by the appellant to the investigating officer PW-9 was concerned, the law on this aspect is quite clear, which we wish to explain at the very outset and before examining the chain of circumstances noted and explained in the judgment impugned.

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11. As far as the admissibility of the confessional statement made by an accused to the police officer is concerned, the law is well settled, which can be succinctly stated by making reference to an earlier decision of this Court in *Bheru Singh v. State of Rajasthan* - 1994 (2) SCC 467. In the said decision, paras 16 and 19 can be usefully referred, which read as under:

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“16. A confession or an admission is evidence against the maker of it so long as its admissibility is not excluded by some provision of law. Provisions of Sections 24 to 30 of the Evidence Act and of Section 164 of the Code of Criminal Procedure deal with confessions. By virtue of the provisions of Section 25 of the Evidence Act, a confession made to a police officer under no circumstance is admissible in evidence against an accused. The section deals with confessions made not only when the accused was free and not in police custody but also with the one made by such a person before any investigation had

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of the Evidence Act. The relationship of the appellant with the deceased; the motive for commission of the crime and the presence of his sister-in-law PW 11 do not amount to the confession of committing any crime. Those statements are non-confessional in nature and can be used against the appellant as evidence under Section 8 of the Evidence Act. *The production and seizure of the sword by the appellant at the police station which was bloodstained, is also saved by the provisions of the Evidence Act. However, the statement that the sword had been used to commit the murders as well as the manner of committing the crime is clearly inadmissible in evidence.* Thus, to the limited extent as we have noticed above and save to that extent only the other portion of the first information report Ex. P-42 must be excluded from evidence as the rest of the statement amounts to confession of committing the crime and is not admissible in evidence.”

(Emphasis added)

12. In this context we can also refer to a recent decision of this Court in *Sandeep v. State of Uttar Pradesh - 2012 (6) SCC 107*. In para 52, the legal position as regards the admissibility of some part of the statement of the accused, which can be treated as admission has been explained as under in para 52:

52. We find force in the submission of the learned Senior Counsel for the State. *It is quite common that based on admissible portion of the statement of the accused whenever and wherever recoveries are made, the same are admissible in evidence and it is for the accused in those situations to explain to the satisfaction of the court as to the nature of recoveries and as to how they came into possession or for planting the same at the places from where they were recovered.* Similarly, this part of the statement which does not in any way implicate the accused but is mere statement of facts would only amount

A to mere admissions which can be relied upon for ascertaining the other facts which are intrinsically connected with the occurrence, while at the same time, the same would not in any way result in implicating the accused in the offence directly.

B (Emphasis added)

13. Since the confessional statement was made before the investigating officer (PW-9), it is necessary to note what exactly was the confession stated to have been made, which enabled C the IO to make some progress in his investigation. According to PW-9, he recorded the confession of the appellant at 11.30 p.m. on 23.04.2002. He also stated that based on the information furnished by the appellant, he also arrested Arun Mandal who also made a confession, which was identical to D the one made by the appellant. Though PW-9 would refer to very many statements alleged to have been admitted by the appellant and co-accused Arun Mandal, in our considered opinion, the only part of the admission, which can be noted and accepted as admissible in the evidence related to the E identification of the place where the dead body of the deceased Chhotu was found, based on the admission of the appellant and the co-accused.

14. Insofar as the said part of the evidence of PW-9 read along with the admission found in Exhibits-4 and 5 is concerned, F it has come out in evidence that the appellant was taken to the place called Maldiha Dhar (a river stream) along with PW-4, the paternal uncle of the deceased where the dead body of the deceased Chhotu was recovered from the water of Maldiha Dhar. PW-9 stated that since Maldiha Dhar (stream) fell within G the jurisdiction of Barhara P.S., of district Purnea, he could not immediately lift the body from that place, that he left the dead body at that very place under the protection of armed forces and, therefore, after getting necessary official clearance, the body was handed over to the police station of his jurisdiction H and the same was sent for carrying out necessary post mortem.

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PW-4 in his evidence also corroborated the above said version of PW-9 by stating that he proceeded along with PW-9, as guided by the appellant and co accused Arun Mandal and that they reached the place Maldiha Dhar, where the dead body was found as pointed out by the appellant and co accused. He also stated that he identified the dead body as that of his nephew, Chhotu the deceased. He further stated that the eyes of the dead body were open, the tongue was protruding out and that there were marks of throttling in the neck of the deceased.

15. From the above evidence of PW-9, supported by the version of PW-4, it has come to light that at the instance of the appellant and the co-accused Arun Mandal, the body of the deceased Chhotu was recovered from Maldiha Dhar (river stream) and that it was noted at that time the eyes of the dead body and the tongue were protruding out. There were also signs of marks on the neck of the deceased Chhotu. The said part of the confessional statement as recorded by PW-9, cannot be said to straightaway implicate the appellant and the co-accused to the killing of the deceased. Leaving aside the rest of the part of the admission, the identity of the place at the instance of the appellant and the co-accused, as to where the dead body of the deceased was lying, which was exclusively within the knowledge of the appellant, was certainly admissible by virtue of the application of Section 8, read along with Section 27 of the Evidence Act.

16. In such circumstances, in the absence of any convincing explanation offered on behalf of the appellant accused as to under what circumstances he was able to lead the Police party to the place where the dead body of the deceased was found, it will have to be held that such recovery of the dead body, which is a very clinching circumstance in the case of this nature, would act deadly against the appellant considered along with rest of the circumstances demonstrated by the prosecution to rope in the appellant in the alleged crime of the killing of the deceased. Therefore, once we find that there was definite

A admission on behalf of the appellant by which the prosecuting agency was able to recover the body of the deceased from a place, which was within the special knowledge of the appellant, the only other aspect to be examined is whether the appellant came forward with any convincing explanation to get over the
B said admission. Unfortunately though the above incriminating circumstance was put to the appellant in the 313 questioning where he had an opportunity to explain, except a mere denial there was no other convincing explanation offered by him.

C 17. Thus, we reach a conclusion that the said circumstance of recovery of the body of the deceased from the place called Maldiha Dhar (a river stream) at the instance of the appellant as spoken to by PW-9, supported by the evidence of PW4, we have to only see whether rest of the circumstances considered
D by the trial Court, as well as the High Court, were sufficient to confirm the ultimate conviction of the appellant and the sentence imposed on him. On this aspect when we perused the judgment of the trial Court, as well as the High Court, the following circumstances have been found to be established:

E (i) PW-1 referred to the factum of the appellant attempting to ride a motorcycle in a narrow lane opposite to the shop of PW-1 and that when PW-1 advised him that vehicle cannot pass through the said lane the appellant parked the said motorcycle near the shop of PW-1 and went away to
F Thakurbari on foot;

G (ii) PW-1 was asked by the father of the accused who was also arrayed as A-3, namely, Girendra Gupta who requested PW-1 not to divulge the said fact about the parking of the motorcycle to anyone;

H (iii) According to PW-4, the uncle of the deceased, while he along with others were searching for the deceased he was informed by an old lady that she saw two persons going in a motorcycle with a boy sitting in between them though she could not identify any of them due to darkness.

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(iv) The deceased who went to attend the *Mela* at about 8 or 9 p.m. on 21.04.2002 did not return back as spoken to by PW-7

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(v) The body of the deceased was recovered from Maldiha Dhar (a river stream) based on the identification of the appellant.

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(vi) When the body was recovered it was noted that the eyeball was bulging out and the tongue was protruding out apart from bruises noted on both sides of the neck.

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(vii) The postmortem report of PW-10 confirms that the death of the deceased was due to asphyxia by strangulating the neck of the deceased. The said postmortem report also made it clear that eyeball was bulging and the tongue was protruding out and the abrasions on both sides of the neck were also noted.

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(viii) The admissible version of the confessional statement of the appellant also revealed that his father A-3 asked PW-1 not to disclose the fact about the parking of a motorcycle of the appellant near his shop.

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(ix) The recovery of the motorcycle bearing registration No.BR-39 0148 used by the appellant at the instance of the appellant from his house which was marked as Ext.8.

(x) PW-10 the postmortem doctor in the course of the cross-examination confirmed that he could mention the cause of death with certainty and that in any case it was not a case of drowning.

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18. The above circumstances having been found to be fully established, the conclusion of the trial Court, as well that of the High Court in holding that the chain of circumstances was complete in every respect in order to lead to the only conclusion that the appellant was squarely responsible for the killing of the deceased, was well justified. Though the learned counsel for

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A the appellant attempted to point out some discrepancy in the matter of arrest of Arun Mandal and recording of the alleged confessional statement of the appellant under Ext.4, pursuant to which the body was traced out, we are of the view that the said discrepancy was a very trivial one and on that score we do not find any scope to dislodge the findings of the Courts below. We are, therefore, convinced that the ultimate conviction of the appellant under Section 302 of IPC and the sentence of life imprisonment imposed on him by commuting the death penalty imposed by the trial Court, was perfectly justified and we do not find any good grounds to interfere with the same.

C The appeal fails and the same is dismissed.

B.B.B. Appeal Dismissed.