

**IN THE HIGH COURT OF JUDICATURE AT PATNA
DEATH REFERENCE No.2 of 2022**

Arising Out of PS. Case No.-223 Year-2015 Thana- BIBHUTIPUR District- Samastipur

The State of Bihar

... .. Petitioner/s

Versus

Deva Nand Singh, Son of Ramdev Singh, Resident of Village - Alampurdi,
P.s.- Bibhutipur, Distt.- Samastipur.

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 241 of 2022

Arising Out of PS. Case No.-223 Year-2015 Thana- BIBHUTIPUR District- Samastipur

Gauri Kant Mahto, son of Late Ram Charitra Mahto Resident of Village -
Kapan, Police Station - Bibhutipur, District - Samastipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 278 of 2022

Arising Out of PS. Case No.-223 Year-2015 Thana- BIBHUTIPUR District- Samastipur

Sudhir Kumar Singh @ Sudhir Singh @ Sudhir Kumar, Son of Ramdeo Singh
Resident of Village - Aalampurdi, P.S. - Bibhutipur, District - Samastipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 279 of 2022

Arising Out of PS. Case No.-223 Year-2015 Thana- BIBHUTIPUR District- Samastipur

Deva Nand Singh, Son of Ramdeo Singh Resident of Village - Aalampurdi,
P.S.- Bibhutipur, District - Samastipur.

... .. Appellant/s

Versus

The State of Bihar



... .. Respondent/s

Appearance :

(In DEATH REFERENCE No. 2 of 2022)

For the Petitioner/s : Ms. Shashi Bala Verma, APP
For the Respondent/s : Mr. Baxi S.R.P. Sinha, Sr. Advocate

(In CRIMINAL APPEAL (DB) No. 241 of 2022)

For the Appellant/s : Mr. Alok Kumar, Advocate
Mr. Birendra Kumar Singh, Advocate
Mr. Raghwendra Pratap Singh, Advocate
Mr. Sujit Kumar, Advocate

For the Respondent/s : Mr. Ajay Mishra, Advocate

(In CRIMINAL APPEAL (DB) No. 278 of 2022)

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Advocate
Mr. Randhir Kumar No.1, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 279 of 2022)

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Advocate
Mr. Randhir Kumar No.1, Advocate

For the Respondent/s : Mr. Ajay Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE JUSTICE SMT. G. ANUPAMA

CHAKRAVARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 30-11-2023

As the appellant Deva Nand Singh has been sentenced to death, a reference has been made by the Trial Court for confirmation of the said sentence giving rise to Death Reference No. 02 of 2022 under Section 366 of the Cr.P.C. As the aforesaid Death Reference and all the criminal appeals arise out of the same impugned judgment of conviction and the order of sentence passed by the Trial Court, they have been heard together and are being disposed of by the present common judgment and order. Hearing of these appeals have been



expedited because of the death sentence imposed by the Trial Court.

2. These appeals have been preferred by the appellants under Section 374(2) of the Code of Criminal Procedure, putting to challenge a judgment of conviction dated 22.02.2022 and an order of sentence dated 28.02.2022, passed by the learned Additional Sessions Judge-1, Rosera, Samastipur in Sessions Trial No. 261 of 2016, 227 of 2018 and 388 of 2018, CIS No. 97 of 2016, 946 of 2017 and 353 of 2018, arising out of Bibhutipur P.S. Case No. 223 of 2015, whereby the appellants have been convicted and sentenced as under:-

CRIMINAL APPEAL (DB) No. 241 of 2022				
Appellant	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Gauri Kant Mahto	302/34 of the IPC	R.I. for life	25,000/-	SI for one year
	302/120B of the IPC	R.I. for life	25,000/-	SI for one year
	201/34 of the IPC	RI for three years	10,000/-	SI for three months
CRIMINAL APPEAL (DB) No. 278 of 2022				
Appellant	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Sudhir Kumr Singh	302/34 of the IPC	R.I. for life	25,000/-	SI for one year
	302/120B of the IPC	R.I. for life	25,000/-	SI for one year
	201/34 of the IPC	RI for three years	10,000/-	SI for three months
CRIMINAL APPEAL (DB) No. 279 of 2022				



Appellant	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Deva Nand Singh	302/120B of the IPC	Death Sentence	X	X
	201 of the IPC	RI for three years	10,000/-	SI for three months

3. It is the prosecution's case that two young persons, deeply in love with each other were killed by the appellants as they were opposed to their relationship. A village *Chowkidar* Krishnadeo Paswan (PW-5) is the informant of the concerned Bibhutipur P.S. Case No. 223 of 2015, whose *fardebayan* is the basis for registration of the said F.I.R. According to his *fardebayan* he learnt on 06.11.2015 in the morning that dead bodies of a boy and a girl were hanging from a banyan tree at *Kapan Chaur*. On reaching the said place, he noticed two bodies hanging from one of the branches of banyan tree. A mobile phone was also found near the root of the tree. After he circulated the information, many people gathered there and identified the said dead bodies. The girl, whose dead body was found hanging, was the niece of the appellants Sudhir Kumar Singh and Deva Nand Singh. The *Chowkidar* (the informant) suspected it to be a case of murder, whereafter the dead bodies were hanged for hiding evidence. The said *fardebayan* was recorded by the S.H.O., Chaturvedi Sudhir Kumar (PW-9) at



7:30 AM at the place where the dead bodies were found. Inquest report was prepared. Seizure list was also prepared in respect of seizure of a *Nokia* mobile phone with two SIMs. The FIR was registered against unknown. The dead bodies were sent for postmortem examination. The following antemortem injuries were found on the person of the deceased Deepak Kumar :-

"Externally :- (1) Rigor mortis present (2) A postmortem ligature size about 4"X1" in front and both sides of neck (3) No external sign of injury was found (4) Abdominal distortion

Internally :- (1) All viscera were congested including brain (2) No vital reaction was found on dissection of nose below the ligature marks (3) No bruising or haematoma was found below the ligature mark (4) About 250 ml of turbid foul smelling liquid was found in the lumen of the stomach, viscera including stomach within contents, a top of small intestine, parts of heart, lungs liver, spleen, kidney were preserved in a sealed and labelled container and was forwarded to FSL for chemical analysis and handed to police concerned.

Time elapse since death :- 36 hours

The Medical Board is of the opinion that death of the above mentioned deceased has been caused due to suspected poisoning unless and until proved otherwise by the report of chemical analysis of viscera from F.S.L."

4. Further, following antemortem injuries were found in case of the other deceased :-

"Externally :- (1) Rigor mortis present (2) A postmortem ligature of size about 6"X1/2" in front and both sides of neck (3) No external sign of injury was found (4) Abdominal distortion

Internally :- (1) All viscera were congested including brain (2) No vitals reaction was found on dissection of nose below the ligature marks



(3) No bruising or haematoma was found below the ligature mark (4) About 250 ml of turbid foul smelling liquid was found in the lumen of the stomach, viscera including stomach within contents, a loop of small intestine, a part of heart, lungs, liver, spleen, kidney were preserved in a sealed and labelled container and was forwarded to FSL for chemical analysis and handed to police concerned.

Time elapse since death :- 36 hours.

The Medical Board is of the opinion that death of the above mentioned deceased has been caused due to suspected poisoning unless and until proved otherwise by the report of chemical analysis of viscera from F.S.L."

5. It transpires that during course of investigation one Rajiv Kumar was apprehended based on suspicion by the police, who is said to have made his confessional statement before the police on 19.12.2015 while in custody. The gist of his confession is to the effect that father of the deceased Deepak Kumar, namely, Ganga Prasad Mahto (PW-4) had a shop in the name of Mithila Milk Centre in front of his (Rajiv's) father's Jewellery shop. The deceased girl Madhu Priya would come to his Jewellery shop for some alterations in her silver ornaments (anklet). They had shared their mobile numbers. Their interaction continued for some time. She had also disclosed him that she was deeply in love with the deceased Deepak Kumar. At the same time she wanted to befriend Rajiv also. The uncle of the deceased girl learnt about her association with Rajiv, who came to his shop and asked him not to ever talk with the



deceased. At the same time, the uncle of the deceased girl Deva Nand Singh asked Rajiv to talk to the girl and tell her about Deepak and keep Deva Nand informing about his movements. According to Rajiv, the deceased girl would discuss everything with him. On 05.11.2015 he had a long chat with the deceased girl on mobile phones. The deceased girl had given an indication to Rajiv that she would talk to Deepak. Rajiv is said to have gone to the house of Deva Nand Singh to tell him about the plans of the deceased girl to meet Deepak. Deepak is said to have come to meet the deceased girl in the night. As soon as Deepak (deceased) entered into the house of Deva Nand Singh, he (Deva Nand Singh), the appellant Gauri Kant Mahto and their three accomplices caught both of them. They first killed the deceased Deepak by administering poison with the use of injection. The deceased girl was under the clutches of the appellant Gauri Kant Mahto, a friend of the appellant Deva Nand Singh. When the deceased girl threatened of disclosing their act of killing the deceased Deepak, they killed the girl also. Thereafter, Rajiv is said to have gone back to his house. It emerges from the confessional statement (Exhibit-8) that according to him, the appellant Deva Nand Singh had given him a sum of Rs.10,000/- for furnishing the information about



Deepak.

6. The police upon completion of investigation submitted chargesheet on 16.03.2016 against Rajiv and appellant Gauri Kant Mahto. Subsequently, another chargesheet was submitted against the appellant Sudhir Kumar Singh on 23.08.2017 and, further, on 17.02.2018 against the appellant Deva Nand Singh, for the offences punishable under Sections 302, 201 and 120B of the I.P.C.

7. It is noteworthy that a plea was taken on behalf of Rajiv Kumar of his juvenility. His case was accordingly referred to Juvenile Justice Board. Filing of the said three chargesheets gave rise to three sessions trials i.e. Sessions Trial No. 261 of 2016 (against Rajiv Kumar and Gauri Kant Mahto), Sessions Trial No. 227 of 2018 (against Sudhir Kumar Singh) and Sessions Trial No.388 of 2018 (against Deva Nand Singh).

8. As has been noted above, the trial in respect of Rajiv Kumar was separated and by an order dated 07.08.2019 passed by the learned Additional Session Judge-I all the three trials were amalgamated. It is also noteworthy that the appellant Deva Nand Singh was charged of the offences punishable under Sections 302, 302/120B and 201 of the I.P.C., the appellant Sudhir Kumar Singh for the offences punishable under Sections



302/34, 201/34 and 302/120B of the I.P.C. and the appellant Gauri Kant Mahto for the offence punishable under Section 302/34, 302/120B and 201/34 of the I.P.C. The appellants denied the charges and claimed to be tried.

9. The prosecution, in support of the charges framed against the appellants examined at the trial altogether 15 witnesses including the three doctors (PW-11, PW-12 and PW-13), who proved the postmortem reports, the S.H.O. (PW-9), two Investigating Officers (PW-6 and PW-7). The informant was examined as PW-5. The uncle of the deceased Deepak, Mahesh Prasad deposed as PW-1, whereas younger brother of Deepak deposed as PW-2. The mother of deceased Deepak deposed as PW-14 and her aunt as PW-15. The father of the deceased Deepak deposed at the trial as PW-4. PW-8 is a formal witness who proved the seizure-list. PW-3 is said to be an independent witness who had seen the appellant and others making a conspiracy. PW-10 proved the confessional statement (Exhibit-8) of Rajiv Kumar.

10. It can be easily noticed from the evidence of the prosecution witnesses that PW-1, PW-2, PW-4, PW-5, PW-14 and PW-15 are hearsay witnesses. There is no eye-witness to the occurrence, according to the prosecution's case, except Rajiv



Kumar whose statement recorded by the S.H.O. has been treated to be a confessional statement by the prosecution.

11. In addition to the oral evidence of the prosecution's witnesses, the prosecution got exhibited following documents to establish the charges against the appellant :-

Sl. No.	Description	Exhibit Number
1.	Fardbeyan	Exhibit-1
2.	Endorsement by SHO on fardbeyan	Exhibit-1/1
3.	Seizure-list of two mobile phones	Exhibit-2
4.	Seized Nokia mobile phone	Exhibit-M
5.	Seized Samsung mobile phone	Exhibit-M/1
6.	Formal FIR	Exhibit-3
7.	Letter of SHO Bhibhutipur for CDR	Exhibit-4
8.	Inquest report of Madhupriya @ Putul Kumari	Exhibit-5
9.	Inquest report of Deepak Kumar	Exhibit-5/1
10.	Seizure-list of Samsung Mobile Phone (19.12.2015)	Exhibit-2/1
11.	Seizure-list of Nokia Mobile Phone (19.12.2015)	Exhibit-2/2
12.	Samsung mobile seized from accused Rajeev Kumar	Exhibit-M/2
13.	Nokia Mobile seized from accused Gauri Kant Mahto	Exhibit-M/3
14.	CDR & C.A.F.	Exhibit-6
15.	R.F.S.L. report of Deepak Kumar (15.03.2016)	Exhibit-7
16.	R.F.S.L. report of Madhupriya @ Putul Kumari	Exhibit-7/1
17.	Confessional statement of accused Rajeev Kumar	Exhibit-8
18.	Complete postmortem report of deceased Deepak Kumar	Exhibit-9
19.	Complete postmortem report of deceased Madhupriya @ Putul Kumari	Exhibit- 9/1

12. After closure of the evidence of the prosecution's



witnesses the appellants were examined under Section 313 of the Cr.P.C. so as to give them an opportunity to explain the incriminating circumstances emerging against them based on the evidence led by the prosecution. They answered in negative the incriminating circumstances against them. No witness was examined on behalf of the defence.

13. The trial court, after having scrutinized and appreciated the evidence adduced at the trial, has concluded by its impugned judgment that the prosecution successfully proved beyond all reasonable doubts the charges against these appellants and sentenced them to imprisonment and fine, as has been noted at the outset.

14. Assailing the impugned finding recorded by the trial court it has been argued by Mr. Alok Kumar, learned counsel for the appellant in Cr. Appeal (DB) No.241 of 2022 that it can be easily inferred on analysis of the evidence of the prosecution's witnesses that the prosecution could not prove beyond doubts as to whether it was a case of homicide or suicide. He has further submitted that the prosecution has heavily relied on the statement of Rajiv Kumar recorded by the S.H.O. (PW-9) when he was in police custody treating it to be a confessional statement admissible under Section 27 of the



Indian Evidence Act. He contends that the said statement cannot be treated to be a confessional statement as it does not disclose admission of guilt of said Rajiv Kumar. Further, the said confessional statement has not led to discovery of any fact and, therefore, the same does not have any evidentiary value under Section 27 of the Evidence Act. He has submitted that, in any view of the matter, the confessional statement of Rajiv Kumar cannot be the sole basis for recording conviction, in view of Section 30 of the Evidence Act. He has further argued, relying on the Supreme Court's decisions in the case of *Haricharan Kurmi v. State of Bihar (AIR 1964 SC 1184)* and *Surinder Kumar Khanna v. Directorate of Revenue Intelligence* reported in *(2018) 8 SCC 271* that confessional statement of a co-accused cannot be the basis for conviction. He has argued that the evidence of hearsay witnesses has no evidentiary value and the prosecution has completely failed to established a case of conspiracy behind killing of the two deceased persons.

15. Mr. Baxi S.R.P. Sinha, learned Senior Counsel appearing on behalf of the appellants in Cr. Appeal (DB) No. 278 of 2022 and Cr. Appeal (DB) No. 279 of 2022, while adopting the submissions advanced in Cr. Appeal (DB) No. 241 of 2022, has argued that if the case as set out by the prosecution



based on the so called confessional statement of Rajiv Kumar was to be accepted, the duty was heavy upon the prosecution to prove the place of occurrence where, according to co-accused Rajiv Kumar, the appellants had administered poison by injection. He has argued that the prosecution's case stands completely demolished by the postmortem reports which suggest presence of *Celphos* in the intestine of both the deceased persons. He further submits that there is more chance of the deceased persons having committed suicide by consuming poison. The circumstance in which their dead bodies were found hanging from a branch of a *Banyan* tree has not been established in view of the clear evidence that the earth around the root of the tree was found to be muddy and there was no mark of any footprint on the ground. Presence of a mobile phone said to have been seized by the police near the *Banyan* tree also belies the narration said to have been made by Rajiv Kumar in his so called confessional statement recorded by the police. He has lastly submitted that, in any case, the statement of Rajiv Kumar (Exhibit-8) cannot be treated to be a confessional statement as there is no admission of his guilt, therein.

16. Learned Additional Public Prosecutor, while defending the finding of conviction recorded by the trial court,



has submitted that the prosecution has been able to prove at the trial that the two deceased persons were in love with each other and the appellants Deva Nand Singh and Sudhir Kumar Singh were dead against such relationship. The fact that the family members of the girl were against such relationship, is corroborated by the confessional statement of co-accused Rajiv Kumar (a juvenile). She contends that it is apparently a case of honour killing and in order to give the occurrence a colour of suicide, after killing of the deceased, their dead bodies were hanged from a branch of a *Banyan* tree. She argues that PW-3 is a witness to the conspiracy which was hatched up to kill the deceased. The circumstance and the background in which the occurrence had taken place, based on the evidence adduced at the trial, one can reach the one and the only conclusion that it were these appellants who had killed the deceased, leaving aside any other hypothesis. Based on strong circumstantial evidence proving complete chain of events, the trial court has rightly convicted the appellants and considering the gruesome manner in which the two persons were killed and attempts were made to hide evidence, the trial court has rightly sentenced the appellant Deva Nand Singh to death, it being a case in the nature of 'rarest of rare cases'.



17. We have perused the impugned judgment and order of the trial court as well as the trial court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the appellants and the State.

18. It can be easily discerned from the prosecution's case right from the stage of investigation till the adducement of the evidence at the trial that the names of these appellants came to the fore only upon certain disclosures said to have been made by Rajiv Kumar during the course of investigation when he was in police custody. It is also manifest from the materials on record that the said confessional statement of Rajiv Kumar is the sheet-anchor of the prosecution to support the charges against these appellants. It is indisputable, however, that no statement is said to have been made by Rajiv Kumar before the police led to discovery of any fact. We find force in the submission advanced on behalf of the appellants that such statement said to have been made by Rajiv Kumar before the police is of no evidentiary value taking aid of Section 27 of the Indian Evidence Act, 1872.

19. The moot question apropos the statement of Rajiv Kumar said to have been made before the police, which has been marked as Exhibit-8 at the trial, is as to whether the said statement can be treated to be a confessional statement at all or



not. On close reading of Exhibit-8, we notice that said Rajiv Kumar has not, in any manner, admitted his guilt in relation to commission of the offence of killing. By no stretch of imagination, it can be inferred from the said statement that he was a party to any conspiracy hatched up for killing of the deceased. What he is said to have disclosed to the police is that the appellant Deva Nand Singh had given him some money and had asked him to inform him (Deva Nand Singh) about the deceased (Deepak). In order to inform that Deepak was planning to talk to the niece of the appellant Deva Nand Singh (the deceased girl), he had gone to the house of Deva Nand Singh. He had thereafter seen Deepak entering into the house of Deva Nand Singh. According to his confessional statement, it is not his case that at his instance, Deepak had come to the house of Deva Nand Singh. There is no indication in his statement that he knew that if, Deepak arrived there, he would be killed. According to his own statement, Rajiv Kumar had waited at the house of Deva Nand Singh after informing him about Deepak for some time. He (Rajiv Kumar) thereafter saw the occurrence of Deepak and the deceased girl being killed in the house of Deva Nand Singh by administering some poisonous substance with the use of injection. The statement of Rajiv Kumar, in our



considered opinion, cannot be treated to be a confessional statement.

20. It will be useful to notice, at this juncture, Lord Atkin's observation in case of **Narayan Swami Vs. Emperor (AIR 1939 PC 47)** to the effect that a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not itself a confession.

21. Taking note of the Privy Council's decision in case of **Narayan Swami** (supra), the Supreme Court has laid down in case of **State (NCT of Delhi) v. Navjot Sandhu**, reported in **(2005) 11 SCC 600** in paragraph 27 as under :-

“27. We start with the confessions. Under the general law of the land as reflected in the Evidence Act, no confession made to a police officer can be proved against an accused. “Confessions” which is a terminology used in criminal law is a species of “admissions” as defined in Section 17 of the Evidence Act. An admission is a statement, oral or documentary which enables the court to draw an inference as to any fact in issue or relevant fact. It is trite to say that every confession must necessarily be an admission, but, every admission does not necessarily amount to a confession. While Sections 17 to 23 deal with admissions, the law as to confessions is embodied in Sections 24 to 30 of the Evidence Act. Section 25 bars proof of a confession made to a police officer. Section 26 goes a step further and prohibits proof of confession made by any person while he is in



the custody of a police officer, unless it be made in the immediate presence of a Magistrate. Section 24 lays down the obvious rule that a confession made under any inducement, threat or promise becomes irrelevant in a criminal proceeding. Such inducement, threat or promise need not be proved to the hilt. If it *appears* to the court that the making of the confession was caused by any inducement, threat or promise proceeding from a person in authority, the confession is liable to be excluded from evidence. The expression “appears” connotes that the court need not go to the extent of holding that the threat, etc. has in fact been proved. If the facts and circumstances emerging from the evidence adduced make it reasonably probable that the confession could be the result of threat, inducement or pressure, the court will refrain from acting on such confession, even if it be a confession made to a Magistrate or a person other than a police officer. Confessions leading to discovery of a fact which is dealt with under Section 27 is an exception to the rule of exclusion of confession made by an accused in the custody of a police officer. Consideration of a proved confession affecting the person making it as well as the co-accused is provided for by Section 30. Briefly and broadly, this is the scheme of the law of evidence vis-à-vis confessions. The allied provision which needs to be noticed at this juncture is Section 162 CrPC. It prohibits the use of any statement made by any person to a police officer in the course of investigation for any purpose at any enquiry or trial in respect of any offence under investigation. However, it can be used to a limited extent to contradict a witness as provided for by Section 145 of the Evidence Act. Sub-section (2) of Section 162 makes it explicit that the embargo laid down in the section shall not be deemed to apply to any statement falling within clause (1) of Section 32 or to affect the provisions of Section 27 of the Evidence Act.”



22. Upon close reading of Exhibit 8, we have no hesitation in reaching a definite conclusion that the same is neither admissible under Section 27 of the Evidence Act nor can be treated to be a confessional statement at all. Rajiv Kumar was not examined as a witness at the trial and he did not face the trial as his case was referred to Juvenile Justice Board in the background of his claim of juvenility.

23. The entire case of the prosecution, based on the so-called confessional statement of Rajiv Kumar, becomes doubtful with the recovery of a mobile phone from the place where the dead bodies were found hanging. If the version, as disclosed by Rajiv Kumar, is to be accepted then there appears to be no valid justification as to how the said mobile phone of the deceased reached the place of occurrence.

24. Further, it is the prosecution's case that the occurrence had taken place in the house of the appellant Deva Nand Singh. The place where the dead bodies were found hanging was at a distance of nearly half a kilometer away from the house of appellant Deva Nand Singh. However, the said place of occurrence has not been proved at the trial. There is no material at all to prove, the manner in which, the dead bodies were carried from the house of Deva Nand Singh to the place



where the dead bodies were found hanging from a banyan tree.

25. The medical evidence also does not support the prosecution's case of the poison having being administered by these appellants by injection. The doctor (PW-11), in his evidence deposed that the deaths of two deceased persons were caused due to suspected poisoning like celphos. The other doctors, i.e., PWs. 12 and 13 have also made similar depositions. The viscera was sent for forensic examination. In the Forensic Science Report (Exhibit-7) the description of article(s) contained in the parcels sent to the FSL for examination reads thus:-

"Plastic jar contained some portions of heart, lungs, liver, spleen, kidney, a loop of small intestine and stomach with its contents."

26. The result of examination reads thus:-

"Endosulfan was detected in the contents of plastic jar as described above. Endosulfan is an organo-chloro pesticide which is commonly used in agriculture for killing pests and is poisonous."

27. The result of the forensic examination conducted by the FSL does not support the prosecution's case that any poisonous substance was injected in the body of the deceased, as was the case narrated by Rajiv Kumar, a co-accused (juvenile). We thus, reach a conclusion that neither any credence can be given to the narration of the prosecution's case, based on



the statement of Rajiv Kumar, nor his evidence is legally admissible.

28. We have noted hereinabove that PWs 1, 2, 4, 5, 14 and 15 are hearsay witnesses. PW-5, whose *fardebayan* is the basis for registration of FIR, is said to have learnt that the dead bodies were hanging from a banyan tree at *Kapan Chaur*. He had gone there and had seen a mobile phone lying on the ground. Thereafter, other villagers also started reaching. In his cross-examination, he deposed that hundreds of people had already gathered when he had reached the place where the dead bodies were found hanging.

29. In our opinion, the depositions of hearsay witnesses are of no evidentiary value and they cannot be said to have proved, even circumstances of the deceased having being killed by these appellants. The evidence of PW-3 is also only to the effect that the deceased were in love with each other and family members of the deceased girl were against the relationship. He is said to have seen the accused persons hatching up a conspiracy.

30. In view of the above-noted discussions, we are of the view that there is no eye-witness to the occurrence. The circumstances said to have been proved at the trial, cannot be



said to be proving guilt of these appellants as the only hypothesis leaving aside any other theory. The chain of circumstances cannot be said to be complete, as, according to the prosecution's case, the deceased were killed in the house of appellant Deva Nand Singh but the dead bodies were found at a place nearly about half kilometer away, hanging from a banyan tree. This gap has not been proved by the prosecution against these appellants. It is trite that in a case of circumstantial evidence all the chain of events are to be essentially linked and in case of any missing link, benefit of doubt shall go to the accused persons.

31. We are of the considered view that the evidence adduced at the trial by the prosecution were inadequate to establish, beyond all reasonable doubts, commission of the offence of murder or conspiracy therefor, against these appellants.

32. We do not consider it safe to uphold the finding of conviction recorded by the trial court. The impugned judgment of conviction of the trial court deserves interference.

33. Accordingly, the impugned judgment of conviction and the order of sentence dated 22.02.2022/ 28.02.2022, passed by the learned Additional Sessions Judge-1,



Rosera, Samastipur in Sessions Trial No. 261 of 2016, 227 of 2018 and 388 of 2018, CIS No. 97 of 2016, 946 of 2017 and 353 of 2018, arising out of Bibhutipur P.S. Case No. 223 of 2015, are set aside. The appellant Deva Nand Singh stands acquitted of the charge of offences punishable under Sections 302/120B and 201 of the IPC. The appellants Gauri Kant Mahto and Sudhir Kumar Singh stand acquitted of the charge of offences punishable under Sections 302/34, 302/120B and 201/34 of the IPC.

34. These appeals are allowed. The Death Reference is answered accordingly.

35. The appellants are in jail custody. Let them be released forthwith, if they are not required in any other case.

(Chakradhari Sharan Singh, J)

(G. Anupama Chakravarthy, J)

Rajesh/Suraj

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.01.2024
Transmission Date	02.01.2024

