

# SUPREME COURT OF INDIA

Gopal Sah

Vs.

State of Bihar

Crl.A.No.377 of 2000

(Dalveer Bhandari and Harjit Singh Bedi JJ.)

03.12.2008

## JUDGMENT

**Harjit Singh Bedi,J.**

1. Four persons - Gopal Sah, Dasrath Sah, Bhushan Sah and Raghunath Sah were tried by the Additional Sessions Judge, Saharsa for offences punishable under Sections 302/34, 304/34, 201/34 and 120B of the Indian Penal Code. The trial court in its judgment dated 14th September 1985 held the first three accused guilty of the offence under Section 302/34 of the IPC and sentenced them to undergo imprisonment for life whereas Raghunath Sah was acquitted. Two appeals were thereafter filed by the convicted accused before the Patna High Court whereas the complainant also filed a revision against the acquittal of Raghunath Sah. During the pendency of the appeal in the High Court, Dasrath Sah died. The High Court, however, upheld the trial court judgment with respect to the three accused. Gopal Sah accused then filed the present criminal appeal challenging his conviction and the matter has been put up for final hearing before us. Bhushan Sah subsequently filed a special leave petition in this Court as well, but it is the admitted position that this matter has been dismissed by this Court on the ground of limitation as well as having no merit.

2. The prosecution story is as under:

3. Gopal Prasad Gupta deceased aged about 18 years went out of his house at about 6 p.m. on 7th June 1982 and when he did not return till dinner time, his family members went in search for him but he could not be found. The search continued the next morning as well though without success. At about 2 p.m. on 8th June 1982 Murtaza Khan PW22 informed the family that Gopal Prasad Gupta's dead body was lying in a ditch near village Chhekabadh on which PW20 Jagdish Prasad Gupta, the uncle of the deceased lodged a FIR at about 2.30 p.m. stating, inter-alia, that at about 6 p.m. on the 7th of June 1982 the deceased had been seen with Raghunath Sah and his son Bhushan Sah near the wooden bridge. During the course of the investigation, the accused were arrested and on their disclosure statements, a blood stained axe and a sickle allegedly used in the murder on 8th of September 1982 were recovered from a water filled pond. The police also conducted a raid at the houses of the four accused and a blood stained ganji, a spade and a bucket were recovered from the house

of Bhushan Sah and Raghunth Sah. The statement of Dasrath Sah was also recorded under Section 164 of the Cr.P.C. by Judicial Magistrate, B.K. Singh PW11. On the completion of the investigation, the accused were charged as already indicated above.

4. The prosecution examined 29 witnesses in all to support the circumstances appearing against the accused, as admittedly there was no eye witness to the murder. PW1 Nageshwari Devi, the mother of the deceased deposed that on the relevant day her son had been taken away by Bhushan Sah for a walk and he had thereafter not returned. PW3 Shivnath Sahu stated that he had seen Gopal Sah, the present appellant, in the orchard of Jai Narayan Sah carrying a sickle in his hand on the date of incident. PW4 Sofil Khan and PW6 Digamber Mandal testified that they had seen Raghunath Sah carrying a spade and a bucket in his hand moving away hurriedly whereas PW5 Md. Nadaf stated further that he had seen the three accused (Gopal Sah, Dasrath Sah and Bhushan Sah) moving away in a disturbed state of mind. PW8 Kameshwar Choudhary too corroborated this statement and further added that he had seen the deceased along with Bhushan Sah and Dasrath Sah near the wooden bridge and a third person whom he could not identify, was urinating close by. He stated that man was not Gobind Gupta, a cousin of the deceased, who too, at one time, was suspected of the murder. PW17 Lakhan Sah further stated that he had seen Gopal Parsad Gupta sitting near the bridge at about sun set with Bhushan Sah and Dasrath Sah accused. The recoveries of the axe, sickle and other articles were sought to be proved by the evidence of PW9 Satyadeo Singh and PW12 Mohd. Arif. The prosecution also produced in evidence PW16 Birendra Maharaj and PW19 Jagannath Choudhary to whom Dasrath accused had allegedly made an extra judicial confession of the involvement of all the accused in the murder.

5. The trial court in its judgment held that the evidence of PW1, the mother of the deceased to the effect that the deceased had gone with Bhushan Sah on the evening of 7th June 1982 could not be relied upon in the light of the evidence of PW21 Binod Kumar, who stated that the deceased had gone with him on his cycle up to the water tank. The trial court also refused to rely on the confession made under section 164 of the Cr.P.C. by Dasrath, as it had not been recorded by following the correct procedure the more so as Dasrath Sah in the course of the trial had alleged that it had been made by him under coercion. The trial court then went on to examine the other evidence. It concluded that from the evidence of PW22 Murtuza Khan it had been established that the dead body of the deceased clad only in a ganji had been found near the orchard on 8th June 1982 at about 2 p.m. The trial court relied upon the extra judicial confession made by Dasrath Sah and on the recovery of the sickle made at the instance of Gopal Sah and found corroboration from the fact that he had been seen rushing away from the place of incident. The trial court concluded that the evidence supported the view that Bhushan Sah and Dasrath Sah had been seen near the bridge at about 6 p.m. on 7th June 1982 whereas one unidentified person was urinating close by who could be Gopal Sah appellant. The Court also accepted the story that Bhushan Sah and Gopal Sah had disclosed to the police on 9th June, 1982 that they had thrown an axe and a sickle in the pond and the axe had been recovered on that day whereas the sickle had been recovered three months thereafter. The High Court in appeal upheld the judgment of the trial court and dismissed both the appeals as well as the criminal revision filed by the complainant. As already mentioned, the present appeal has been filed at the instance of Gopal Sah alone; and

the special leave petition filed by Bhushan Sah has been dismissed on the ground of limitation as well as on merits.

6. The learned counsel for the appellant has raised several arguments during the course of the hearing. It has been pointed out that there was absolutely no evidence to connect Gopal Sah with the crime, as the recovery of the sickle made in September 1982 i.e. about three months after the incident was too remote a factor. It has also been pleaded that the evidence of last seen pertained only to Bhushan Sah and Dasrath Sah accused, as the third person with them near the wooden bridge had not been identified as being Gopal Sah by any of the witnesses. It has further been pleaded that the extra judicial confession allegedly made by Dasrath Sah could not be used as evidence against the other accused and that in any case this evidence too was unbelievable.

7. The learned counsel for the respondent State has, however, argued that the appeal of Bhushan Sah having been dismissed on the same evidence, the present appeal too was liable to dismissal on that basis. He has also pointed out that the recovery of the sickle and the statement of Dasrath Sah which was to be taken as an extra judicial confession completed the chain of events involving Gopal Sah in the murder.

8. We have heard the learned counsel for the parties and gone through the record. Admittedly, there are three main incriminating circumstances against the accused. The first piece of evidence is the suggestion that the third person who was urinating close by the bridge was Gopal Sah, the second the extra judicial confession made by Dasrath Sah and the third the recovery of alleged murder weapon - a sickle. We are of the opinion that this evidence is, to say the least, unacceptable. It has come in the statement of PW8 Kameshwar Choudhary that he had seen Dasrath Sah along with the deceased near the bridge and that another person was urinating close by. It is the suggestion and inference that this person was Gopal Sah. We are, however, of the opinion that there can be no conviction on inferences to be drawn from the prosecution evidence more particularly as there is absolutely no evidence to suggest that the third person was indeed Gopal Sah appellant. We find that in this situation the statement of PW5 Mohd. Nadaf that he had seen the three convicted accused moving swiftly away from the direction of the site of the murder at about 7.30 p.m. or that he had seen the appellant Gopal Sah with a sickle in hand is hardly sufficient to hold him guilty of murder. We are, further, of the opinion that an extra judicial confession is, on the face of it, a weak piece of evidence and the Courts are reluctant in the absence of a chain of cogent circumstances to rely on this evidence for the purpose of recording a conviction. In any case, we find that the confession made by Dasrath Sah can, if at all, be used against him and not against his co-accused. The statement of the investigating officer with respect to the place where the two murder weapons had been allegedly thrown makes the recovery itself tenuous. Moreover, as the sickle allegedly in the hands of Gopal Sah had been recovered from a pond three months after the murder, no evidentiary value whatsoever can be attached to this circumstance as well.

9. The argument of the State counsel that as the appeal of Bhushan Sah had been dismissed on merits, the appeal of Gopal Sah must meet the same fate must now be examined. We

observe that Bhushan Sah's appeal had been dismissed in limine on the ground of limitation as also on merit but we have chosen to hear the present appeal after leave had been granted by this Court long before Bhushan's special leave petition had been filed. We, even otherwise, are of the opinion that the evidence involving Bhushan Sah is qualitatively and quantitatively different from the evidence against Gopal Sah, as would be apparent from the circumstances noted above, not only with respect to the last seen but also relating to the recovery of various items from his house which could be said to be relatable to the murder. We must, therefore, conclude that the dismissal of the special leave petition of Bhushan Sah in limine, would not by itself be a ground to dismiss the appeal of Gopal Sah.

10. For the reasons stated above, we find the judgment of the trial and the High Court in so far as Gopal Sah is concerned to be unsustainable. He is accordingly acquitted of all charges. The appeal is allowed in the above terms.