

**Sunil Singh and Another Vs. the State of Bihar**

**Sunil Singh and Another Vs. the State of Bihar**

**SooperKanoon Citation :** [sooperkanoon.com/1151821](http://sooperkanoon.com/1151821)

**Court :** Patna

**Decided On :** Mar-26-2014

**Judge :** I.a. Ansari & Samarendra Pratap Singh

**Appeal No. :** Criminal Appeal (DB) No.296 of 2013

**Appellant :** Sunil Singh and Another

**Respondent :** The State of Bihar

**Judgement :**

I.A. Ansari and S. P. Singh, J.J.

1. Heard Mr. Ramakant Sharma, learned Senior Counsel for the appellants, and Mr. S.C. Mishra, learned Additional Public Prosecutor for the State.

2. Considering the peculiar facts and circumstances of the present case, we have taken up the appeal, with the consent of the learned counsel for the parties appearing before us, for hearing. The appeal is, accordingly, heard.

3. By judgment, dated 20.03.2013, passed, in Sessions Trial No. 343 of 2010, by learned 1st Additional Sessions Judge-cum-Special Judge, Gopalganj, the present two appellants, namely, Radha Baitha and Sunil Singh, stand convicted under Section 302 and Section 201 read with Section 34 of the Indian Penal Code. Following their conviction under Section 302 read with Section 34 of the Indian Penal Code, as mentioned hereinbefore, the appellants have been sentenced,

vide impugned order, dated 23.03.2013, to undergo imprisonment for life and pay fine of Rs.10,000/- each and, in default of payment of fine, suffer simple imprisonment for one year. For their conviction under Section 201 read with Section 34 of the Indian Penal Code, the appellants have also been sentenced to undergo imprisonment for seven years and pay fine of Rs.2,000/- each and, in default of payment of fine, suffer S.I. for three months. However, both the sentences have been ordered to run concurrently.

4. The case of the prosecution, as unfolded, at the trial, may, in brief, be described as under:

(i) Santosh Kumar, aged about 18 years and a student of Class-IX, used to sleep in Bathan (i.e., cattle house). As usual, on 23.02.2010, at about 8.00 P.M., he went to Bathan after having his meals, but did not return home on the following morning, though he (Santosh Kumar) used to return home in the morning. Sushila Devi (P.W.8), mother of Santosh, sent her daughter to look for her brother, Santosh Kumar. Sushila Devi's daughter returned home and informed her mother that her brother, Santosh Kumar, was not present at Bathan. While Sushila Devi was looking for her son (Santosh Kumar), she was informed by her co-villagers that the dead body of a boy had been found lying in the Gandak canal with injuries on his neck, whereupon Sushila Devi went there and found that the said boy was actually her son, Santosh Kumar. Not knowing as to who had killed her son, Sushila Devi gave, in this regard, an information, in writing, to the police. Treating the said information as First Information Report, Barauli P.S. Case No. 26 of 2010 was registered, under Sections 302/201/34 of the Indian Penal Code read with Section 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, against unknown persons.

(ii) During investigation, police held inquest over the said body, which was also subjected to post mortem examination. During investigation, it surfaced that deceased, Santosh Kumar Ram, used to be, ordinarily, seen in the company of one Manjesh Kumar and that in the evening of 23.02.2010, too, Santosh was seen in the company of Manjesh Kumar. When police contacted the said Manjesh Kumar, the latter informed the police that he (Manjesh Kumar) was with Santosh,

at Santosh's Bathan, at about 8.00 P.M., on 23.02.2010, when accused Dipak arrived there and took away Santosh with him. Manjesh Kumar also informed the police that having waited for Santosh about 10-15 minutes, when Santosh did not return to his Bathan, he (Manjesh) went back to his house. Having received the information that Santosh had left Bathan with Dipak Kumar, police apprehended Dipak Kumar and, on interrogating accused Dipak Kumar, it was discovered by the police that accused Dipak Kumar, with the help of accused Radha Baitha and accused Sunil Singh, had killed Santosh. On completion of investigation, police laid charge sheet, under Sections 302/201/34 of the Indian Penal Code read with Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, against accused Dipak Kumar, accused Radha Baitha and accused Sunil Singh.

5. During trial, a charge, under Section 302 read with Section 34 of the Indian Penal Code, was framed against three accused persons, namely, 1. Sunil Singh, 2. Radha Baitha, and 3. Dipak Kumar. A charge was also framed under Section 201 read with Section 34 of the Indian Penal Code against the three accused aforementioned. A charge was further framed under Section 3 (2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, against all the accused aforementioned. To the charges, so framed, all the accused pleaded not guilty.

6. In support of their case, prosecution examined altogether 10 witnesses, namely, Nand Kishore Ram (P.W. 1), Sangita Devi (P.W.2), Jitendra Ram (P.W.3), Brij Kishore Ram (P.W. 4), Jailal Ram (P.W.5), Manjesh Kumar (P.W. 6), Maina Devi (P.W. 7), Sushila Devi (P.W.8), Ushman Ahmad (P.W.9) and Dr. Ramesh Ram (P.W. 10). The accused persons were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, they denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

7. Having found all the accused guilty of the offences under Sections 302 and 201 read with Section 34 of the Indian Penal Code, learned trial Court convicted all of

them accordingly and passed sentences against them as mentioned above.

8. Aggrieved by their conviction and the sentences passed against them, this appeal has been preferred by two, out of three convicted persons, namely, 1. Sunil Singh, and 2. Radha Baitha.

9. Let us, first, consider the evidence of Dr. Ramesh Ram (P.W.10). His evidence is that on 24.02.2010, he conducted post mortem examination on Santosh Kumars dead body and found as follows:

œExternal injury-Head NAD, Neck- incised wound on anterior aspect of neck of size 2? x ?x trachea deep.

Internal injury (On dissection)- Skull NAD, Brain NAD, Neck-fractured tracheal ring in mid-portion of trachea-Ruptured left carotid vessels and associated nerves fibers.

Chest- Lungs congested.

Heart-Chamber empty of blood.

Abdomen- All viscera was normal, All four limbs- NAD.

External genitalia - NAD

10. In the opinion of doctor, death was due to haemorrhage and shock caused by sharp cutting weapon (substance). Post mortem report stands proved as Exhibit-8.

11. According to the doctor the above mentioned injuries are sufficient to cause death.

12. From the medical evidence on record, it becomes clear that Santosh was put to death by causing incised wounds on the anterior part of his neck. The doctor has also opined that the injuries, so sustained, were sufficient to cause death and that the death was caused due to shock and haemorrhage, which resulted from the injuries aforementioned.

13. In the light of the medical evidence on the record, there can be no doubt that Santosh's death was homicidal in nature. The question, which, now, confronts this Court, in the present appeal, is: whether the present appellants were, in any way, involved in the act of causing death of Santosh?

14. Bearing in mind the medical evidence on record, we turn to the evidence of P.W. 8 (Sushila Devi), who is the informant of the case and mother of the said deceased. According to her evidence, her son, Santosh, went, as usual, at about 8.00 P.M., to Bathan after having his meals and, on the following day, when her son did not come back, she started looking for her son and, at about 4.00 P.M., she came to learn that a dead body was lying in the Gandak canal and when she went there, she found her son, Santosh Kumar, lying dead with his neck slit.

15. It is crystal clear from the evidence of P.W. 8 that she has no personal knowledge as to how her son, Santosh, died or who killed him.

16. Close on the heels of the evidence of the informant, Sushila Devi (P.W.8), Manjesh Kumar (P.W. 6) has deposed that on the night of the occurrence, he was with Santosh, accused Dipak came there and took Santosh away and, thereafter, he (P.W. 6) waited for about 10-15 minutes, but as Santosh did not come back, he (P.W. 6) left for his house and, on the following day, he learnt that Santosh had been killed.

17. In no uncertain words, P.W.6 has conceded that he does not know as to how the occurrence had taken place meaning thereby that he, too, personally does not know as to how Santosh died or who killed him.

18. Coming to the evidence of the Investigating Officer (P.W.9), we notice that this witness has deposed that accused Dipak was apprehended and made a confessional statement (Ext.-7) before the police and, based on his confessional statement, a knife, lying amidst sugar cane leaves, was recovered and the said knife was seized by seizure list (Ext. 6/1). No admissible evidence has been given against the present appellants by the investigating officer, which can be held to be incriminating in nature.

19. We have carefully scanned the evidence on record, but we do not find that there is any direct evidence implicating the present appellants with the killing of Santosh. There is, admittedly, no circumstantial evidence either, so far as the present appellants are concerned, implicating them in the occurrence of causing death of Santosh Kumar. The learned trial Court, we notice, has founded the conviction of two accused-appellants, namely, 1. Sunil Singh and 2. Radha Baitha, on the basis of the confessional statement, which was allegedly made to the Investigating Officer (P.W. 9) by accused Dipak. This confessional statement was, undoubtedly, not admissible in evidence except to the extent as provided by Section 27 of the Evidence Act.

20. Coupled with the above, it is also of immense importance to note that the confession, if any, of an accused made against co-accused would not be substantive evidence against co-accused. Moreover law requires that a Court shall, first, examine the evidence on record and if, on such examination, sufficient substantive evidence is found against the co-accused, then, the confession of the nature, as indicated hereinbefore, can be used for the purpose of lending assurance to the conclusion of guilt, which the Court may reach.

21. In the case at hand, there is not even an iota of admissible evidence on record fastening the present appellants with the act of killing of Santosh.

22. Situated thus, it becomes abundantly clear that the present appellants could not have been legally held guilty of the offences, which they stood charged with, and they ought not to have been convicted under the penal provisions, which they stand convicted.

23. In the result, and for the reasons discussed above, this appeal succeeds. The impugned conviction of the accused-appellants, namely, 1. Sunil Singh and 2. Radha Baitha, by the judgment, under appeal, and the impugned order of sentences, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offences, which they stand convicted of, and they are acquitted of the same.

24. Let the accused“appellants be set at liberty forthwith unless they are required to be detained in connection with any other case.

25. Send back the Lower Court Records with a copy of this judgment and order.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**