

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 191 of 2023**

Arising Out of PS. Case No.-32 Year-2013 Thana- KAMTAUL District- Darbhanga

1. Surendra Yadav @ Suro @ Suro Yadav, aged about 42 years, male, Son Of Kewali Yadav R/V- Kamtaul Mushari Tole, P.S- Kamtaul, Dist- Darbhanga
2. Manoj Yadav @ Manoj Kumar Yadav, aged about 40 years, male, Son Of Ram Sogarath Yadav R/V- Kamtaul Mushari Tole, P.S- Kamtaul, Dist- Darbhanga

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants : Mr. Shiva Shankar Sharma, Advocate
For the Respondent : Mr. Dilip Kumar Sinha, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER**

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

4 02-11-2023 Heard Mr. Shiva Shankar Sharma, learned counsel for the appellants and Mr. Dilip Kumar Sinha, learned A.P.P. for the Respondent-State.

2. Learned counsel for the appellants submits that the appellants have preferred this appeal under Sections 374 (2) and 389(1) of the Code of Criminal Procedure against the judgment of conviction dated 31.01.2023 and order of sentence dated 06.02.2023, passed in Sessions Trial No. 402 of 2013 arising out of Kamtaul P.S. Case No. 32 of 2013 by learned Sessions Judge, Darbhanga, whereby both the appellants have been sentenced to undergo for life imprisonment and also to pay a fine of Rs.



20,000/- each for the offences punishable under Sections 302 and 34 of the Indian Penal Code and in default of payment of fine they have to suffer simple imprisonment for one year more. Further, both the convicts are sentenced to undergo simple imprisonment for one year for the offences punishable under Sections 201 and 34 of the Indian Penal Code and also to pay a fine of Rs. 1,000/- each and in default of payment of fine they have to suffer simple imprisonment for one month more and both the sentences shall run concurrently. It is further submitted that against the said order, the appellants have preferred the present appeal and this Court has already admitted the appeal.

3. It is submitted that at present, the appellants pray for grant of bail and for suspension of the sentence imposed by the concerned trial court. Learned counsel for the appellants has supplied the separate paper-book i.e., copy of the deposition of the prosecution witnesses and the relevant documentary evidence.

4. Learned counsel for the appellants would mainly submit that the case of the prosecution rests on circumstantial evidence and except the theory of last seen together, there is no other material available with the prosecution despite which, the learned trial court has passed an order of conviction against the



appellants. It is further submitted that the two independent witnesses i.e., PW-1 and PW-2 have not supported the case of the prosecution and they have turned hostile. The prosecution has placed reliance upon the deposition of only related and interested witnesses. It is further submitted that PW-3, namely, Dr. Vedanand Jha, who had conducted the *postmortem* on the dead body of the deceased has specifically stated before the court that no external injury could be seen over any part of the body and it has been further stated that death was due to *asphyxia* as a result of drowning in water. It is further submitted by the learned counsel for the appellants that doctor has further observed that if any person in drunken state or in any state fell down in mud, such incident may occur. The said doctor again stated that he did not find any external injury on the body of the deceased. Learned counsel, therefore, urged that looking to the medical evidence produced by the prosecution before the Court, the case of the appellants be considered for grant of bail and for suspension of sentence. At this stage, it is also pointed out that appellants were on bail during the pendency of the trial and they have also not misused the liberty granted by the Court.

5. On the other hand, learned A.P.P. has referred the deposition of the relevant prosecution witnesses and, thereafter,



submitted that the near relatives of the deceased has specifically deposed before the Court that both the appellants came before the house of the deceased and the deceased had gone along with them during night hours and on the next day, dead body of the deceased was found. Thus, the prosecution has duly proved the theory of last seen together which is the main circumstances. It is further submitted that prosecution has also proved the motive on the part of the appellants/convicts to commit the alleged offence. Learned APP, therefore, urged that when the learned trial court has convicted the appellants for the offence punishable under Section 302 of the Indian Penal Code and they have been sentenced to suffer rigorous imprisonment for life. This court may not entertain the prayer for grant of bail made by the appellants.

6. Having heard the learned counsels appearing for the parties and having gone through the material placed on record, it transpires that the case of the prosecution rests on the circumstantial evidence. The prosecution witnesses i.e., PW-1 and PW-2, who are independent witnesses, have not supported the case of the prosecution as observed by the learned trial court. Therefore, the theory of last seen together is put forward by the prosecution through the deposition of the near relatives



and the interested witnesses. It is further required to be noted that PW-3, the doctor, who had conducted the *postmortem* on the dead body of the deceased has specifically observed in paragraph “3” which reads as under:-

“The following features were noted:-

Body Surface body clothes were soiled with mud. Blood stained from was seen over both nostrils. No impression of tie marks were seen along with wrist, although overed colore checked gamcha was sent along with the dead body if police inquest report. No external injury could be seen over any part of the body.”

Further, it is noted by the doctor in paragraph 5 which reads as under:-

“Opinion:- Above noted features were antimortem in nature. Death was due to asphyxia as a result of drowning in water.”

Further, the doctor has specifically observed in paragraph “9” which reads as under:-

“I did not find any alcohol in the stomach of the deceased nor did find any external injury on his person.”

7. From the aforesaid deposition of the doctor, it can be said that no external injury was found on any part of the body of the deceased and death was due to *asphyxia* as a result of drowning in the water.



8. It is also not in dispute that appellants were on bail during the pendency of the trial and it is not the case of the prosecution that they had misused the liberty grant to them during the pendency of the trial.

9. Looking to the overall facts and circumstances of the present case, we are of the view that case of the appellants for grant of bail and for suspension of sentence, deserves to be considered.

10. Accordingly, the appellants are directed to be released on bail on executing bond of Rs. 15,000/- (Rupees Fifteen Thousand) each and upon furnishing two sureties of the like amount each to the satisfaction of learned Sessions Judge, Darbhanga, passed in Sessions Trial No. 402 of 2013 arising out of Kamtaul P.S. Case No. 32 of 2013.

11. The appellants should co-operate in this Court till disposal of the appeal. Till disposal of the appeal, recovery of fine is kept in abeyance.

(Vipul M. Pancholi, J)

(Chandra Shekhar Jha, J)

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