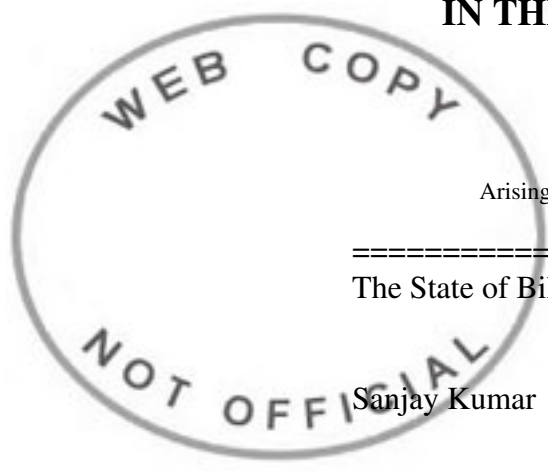




IN THE HIGH COURT OF JUDICATURE AT PATNA

Death Reference No.4 of 2015

Arising out of PS.Case No. -17 Year- 2012 Thana -MAGADH MEDICAL COLLEGE District-
GAYA

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The State of Bihar

Versus

.... Petitioner

Sanjay Kumar

.... Respondent

with

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Criminal Appeal (DB) No. 471 of 2015

Arising out of PS.Case No. -17 Year- 2012 Thana -MAGADH MEDICAL COLLEGE District-
GAYA

=====

Sanjay Kumar, Son of Late Nandlal Manjhi, resident of Mohalla - Veer Kunwar
Singh Colony, P.S. - Magadh Medical College, District - Gaya.

Versus

.... Appellant

The State of Bihar

.... Respondent

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Appearance :

For the Appellant Sanjay Kumar : Mr. Baxi S.R.P. Sinha, Sr. Advocate.
Mr. Ravindra Kumar Sinha, Advocate.
Mr. Sudhir Kumar Sinha, Advocate.
Mr. Ashok Kumar Sinha, Advocate.

For the Respondent State : Mr. Ashwani Kumar Sinha, A.P.P.
Mr. S.C. Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)
Date: 28-09-2015



Instant Death Reference, Cr. Appeal arise out of judgment of conviction, order of sentence dated 26/28.05.2015 passed by Additional District & Sessions Judge-III, Gaya in Sessions Trial No. 10/2014/394/2012, whereunder sole appellant, accused of Magadh Medical P.S. Case No. 17/12 has been convicted for the offences under Sections 302, 376 and 342 of the Penal Code, sentenced to suffer Capital punishment, Rigorous Imprisonment for life, Rigorous Imprisonment for one year respectively. Sentences awarded under Section 376, 342 of the Penal Code have been directed to run concurrently.

2. Prosecution case, as set out in the fardbeyan of Sanjeev Kumar, son of Sri Mohan Paswan, resident of Village- Posanpura Kabir Chak within Sadar Police Station in Darbhanga district, at present residing in Veer Kunwar Singh Colony Road No. 1 within Magadh Medical Police Station, District-Gaya, recorded by Sub Inspector T. Zama Khan of Magadh Medical Police Station, Gaya on 11.03.2012 at 13:15 hours in Village Kaler near Ahra in front of the dead body of his daughter Rani Kumari, 7½



years of age, is that she left the house yesterday on 10.03.2012 around 7:00 P.M., did not return until late night, whereafter informant, his wife Phool Kumari along with other residents of the locality searched for her in the neighbourhood, learnt that she has been seen going towards Village Kaler along with their neighbour Sanjay Kumar, aged 25 years, son of Nand Lal Manjhi, resident of Veer Kunwar Singh Colony within Magadh Medical Police Station. Informant and others came to Village Kaler to search for their daughter but she was not found. Informant and others thereafter came to the house of Sanjay Kumar at 9:03 P.M. but he was also not found. Family members of Sanjay Kumar told the informant that he is not available in the house. Informant, his wife thereafter went to the house of in-laws of Sanjay Kumar, which is near the house of the informant. There also Sanjay was not present, informant, however, learnt that after evening Sanjay Kumar was seen drunk. Informant having learnt that Sanjay Kumar has been seen drunk, became restless as earlier also he was seen misbehaving with his daughter. Yesterday evening while Matka Breaking



was on in the neighbourhood informant's daughter had also come to see the Matka Breaking where Sanjay Kumar was also present. Informant's neighbour saw Sanjay Kumar kissing her, which fact was also disclosed to the informant, he became all the more suspicious, continued the search for his daughter along with other neighbours for the whole night. Alarm was raised today that in a field near Kaler Ahar dead body of a seven year old girl is thrown, whereafter informant, his wife and other neighbours came to the field, identified the dead body as that of Rani Kumari. She was half naked, from her private parts it appeared that she has been raped, killed. The activity of Sanjay Kumar persuaded the informant to believe that Sanjay Kumar has raped his daughter. Informant having read his fardbeyan, contents whereof was also read over to him, put signature over the same in presence of his wife, who also put her Right Thumb Impression over the same.

3. Scribe of the fardbeyan forwarded the fardbeyan to Station House Officer, Magadh Medical Police Station for instituting a case under Sections



342, 302 and 376 of the Penal Code stating that he has taken up its investigation. On the basis of the fardbeyan Magadh Medical P.S. Case No. 17/12 dated 11.03.2012 for the aforesaid offences was registered by Sri Ram Sharekh Singh, Officer-in-Charge, Magadh Medical Police Station, Gaya on 11.03.2012 at 14:05 hours and dispatched to Court on 12.03.2012, as would appear from Column No. 15 of the First Information Report.

4. In the light of the fardbeyan, inquest proceeding over the dead body of Rani Kumari was conducted in the eastern corner of the Rahar field of Uma Paswan of Village- Sohan Bigaha, P.S. Magadh Medical in Village Kaler on 11.03.2012 at 13:45 hours in presence of Sanjeev Kumar, Gopal Singh. From Column No. 8 of the Inquest Report it appears that Rani Kumari was killed. After conducting inquest proceeding over the dead body of Rani Kumari her body was sent to Anugrah Narayan Magadh Medical College, Gaya for post mortem, which was received in the College at 2:50 P.M., post mortem conducted on the same day at 3:00 P.M. by Tutor, Department of Forensic Medicine in the

Anugrah Narayan Magadh Medical College, Gaya. Sanjay Kumar was also arrested on the same day, he recorded his confessional statement also on the same day at 8:00 P.M.

6. From perusal of the Post Mortem Report it appears that cause of death of Rani Kumari aged about 7½ years is genital injury resulting in shock, haemorrhage and asphyxia due to pressure on mouth, nose resulting in suffocation. Vaginal swab was also collected, sealed in a glass tube for D.N.A. analysis.

7. Investigating Officer of the case in the light of the fardbeyan statement, police statement of the parents and other witnesses of the village as also the contents of the Inquest, Post Mortem Reports submitted charge-sheet. In the light of the charge-sheet cognizance was taken, after supply of police papers case was committed to the court of Sessions. Sessions Court framed charge under order dated 20.12.2012 to which appellant pleaded not guilty, claimed to be tried.

8. In support of the charge prosecution examined as many as nine witnesses. P.W. 1 Dr. Ajay



Kumar Jha is Assistant Professor in the department of Surgery in Anugrah Narayan Magadh Medical College, Gaya, examined the accused Sanjay Kumar on 12.03.2012 at 1:30 P.M., found following three injuries on his person :-

(i). 2 cm x 5/10 cm abrasion over left half of lateral side of neck.

(ii). 5 cm x 1/10 cm abrasion over back of chest lower part.

(iii). 6 cm x 4 cm bruise over left scapular area of back.

P.W. 2 Dr. Iftkhar Khan is also Assistant Professor, Skin & Venereal Disease Department in the Magadh Medical College, Gaya, examined the accused Sanjay Kumar on 12.03.2012 at 3:45 P.M., found that he is capable of performing sexual intercourse. P.W. 3 Dr. Parmanand Sinha, Tutor in the Department of Forensic Medicine in the Magadh Medical Hospital, Gaya, conducted post mortem on the dead body of Rani Kumari, aged about 7½ years, found the following ante mortem injuries on her body :-

(i). Abrasion 1" x 1" on either side of

cheek and 1½" x 1½ " on chin and 1" x 1" in front of neck caused by hard and blunt substance.

(ii). Lacerated wound 3" x 1½ " x cavity deep from upper part of vagina to perineum till (torn) the anus. On local examination (torn) and other inside structure and adjacent tissue are massively contused. Congestion, bruise and tear laceration of the structure of posterior wall of introitus and vagina which is extending up to perineum. Dark colour blood and blood clot is found.

(iii). On dissection of body cavity- Trachea and both lungs are found congested.

and then opined in Paragraph 2 that cause of death is genital injury resulting in shock, haemorrhage and asphyxia due to pressure on mouth, nose resulting in suffocation. He also found in Paragraph 3 that there was dry mud, dust all over her body.

9. Learned counsel for the appellant referred to Paragraph 8 of his evidence and submitted that the autopsy surgeon has not found any strangulation mark on the dead body of Rani Kumari, as such, claim of the prosecution that she

was done to death by asphyxia is not proved.

10. P.W. 4 Phool Kumari is the wife of the informant, mother of the deceased. She has stated in her evidence that in the evening of 10.03.2012 Matka Breaking was on in the locality. Her daughter Rani Kumari had gone to see the said event. P.W. 4 also watched Matka Breaking from her door. Sanjay Kumar was also present. P.W. 4 further stated that at the same time she came inside her house to administer medicine to her younger daughter, after administering medicine when she came out by then both Sanjay Kumar, Rani Kumari had disappeared from the place wherefrom they were earlier watching the Matka Breaking event. P.W. 4 further stated that during the evening, night, she searched for her daughter. While searching for her daughter, P.W. 4 met Asha Devi wife of her landlord Gopal Singh and Basanti Devi, both informed her that they had seen Sanjay Kumar going with Rani Kumari towards Village Kaler. P.W. 5 Basanti Devi served as Sweeper in Magadh Medical College, is a neighbour of both informant and the accused. She had seen in the evening of 10.03.2012 Sanjay Kumar





going with Rani Kumari towards Village Kaler through lane, informed the parents of Rani Kumari about such fact. P.W. 6 Sanjeev Kumar is a private ambulance driver in Magadh Medical College, Gaya and the informant of the case. He has deposed that when his wife noticed that her daughter Rani Kumari and accused Sanjay Kumar has disappeared from the place wherefrom they were watching the Matka Breaking event she called him from the hospital as at that time he was on duty. Informant further deposed about the manner in which he undertook the search, came to learn from Asha Devi, Basanti Devi that they had seen Sanjay Kumar going with Rani Kumari towards Village Kaler and the manner in which he, his wife and others searched for her throughout the evening and the night as also at the house of the in-laws of Sanjay Kumar. P.W.7 Gopal Singh is Orderly in Magadh Medical College, Gaya and the landlord of the informant. He has also supported the version given by the informant and other prosecution witnesses. P.W. 8 Taufique Zama Khan on 11.03.2012 was posted as Sub Inspector in Magadh Medical Police Station. He is the scribe of the



fardbeyan, Investigating Officer of the case. He reached the Rahar field in Village Kaler on 11.03.2012 at 12:45 P.M. after hearing rumour that dead body of a girl child is lying in the field, recorded the fardbeyan of the informant as also conducted further investigation in the case, submitted charge-sheet against the accused person.

11. Besides the prosecution witnesses accused has also examined three witnesses. D.W. 1 Shiv Prasad is also resident of Veer Kunwar Singh Colony, Gaya and is a private tutor. He has stated in his evidence that he had seen daughter of Sanjeev Kumar coming to Bhui Toli. The witness has not stated anything substantial to disprove the prosecution case. D.W. 2 Padum Yadav is an Advocate Clerk, has also seen Rani Kumari coming to Bhui Toli to carry country made liquor and refreshment items in her bag. D.W. 3 Sanjay Kumar is the accused himself. He has stated in Paragraphs 1, 2 of his evidence that the occurrence took place two years earlier, at that time he was at his residence, 5-6 persons came to his house, who apprehended, assaulted and took him to the Police



Station where Dy. S.P. came and the witness informed the Dy. S.P. that he is innocent. Later Superintendent of Police also came, his Body Guard pushed him causing scratch injury on his neck and thereafter he was confined in the lock-up. In the same evening appellant was subjected to torture, 3rd degree by administering electric shocks. In Paragraph 2 the witness stated that one week prior to the occurrence he had altercation with the informant as informant had touched him with his ambulance and has been implicated in this case because of the said altercation. In Paragraph 4 of the cross-examination appellant, however, admitted that he has not stated in his 313 Cr.P.C. statement that he was subjected to 3rd Degree treatment, as has been stated by him in Paragraph 1 of his evidence. In Paragraph 4 appellant further stated that on the date of his production he was treated in Magadh Medical College. Such evidence of the appellant does not appear to be corroborated from record as we have examined the order-sheet of the Magistrate dated 12.03.2012, the date on which informant was produced before learned Magistrate, he did not



complain of any ill treatment by the members of the escort party or while he was taken in custody on 12.03.2012 as it is the definite case of the appellant in Paragraph 3 that he was apprehended by 4-5 men on 12.03.2012, which is also admitted in Paragraph 3 of his evidence.

12. Learned counsel for the appellant after taking us to the evidence of the prosecution witnesses submitted that from the evidence of the informant, his wife and neighbour P.W. 5 Basanti Devi it is evident that deceased Rani Kumari and appellant were watching Matka Breaking event in the locality during the evening of 10.03.2012. While watching the event both disappeared. Their disappearance was noticed by P.W. 4 Phool Kumari, mother of Rani Kumari. P.W. 4 having seen Rani Kumari and Sanjay Kumar disappeared from the event called her husband the informant (P.W. 6) and the two began to search for her in the locality. While searching Rani Kumari both P.Ws. 4, 6 met P.W. 5 Basanti Devi and one Asha Devi (not examined), both Basanti Devi and Asha Devi informed P.Ws. 4, 6 that they had seen Rani Kumari in the lane going along



with the appellant. Having learnt such fact both P.Ws. 4, 6 continued with their search, first went towards village Kaler, searched Rani Kumari at Kaler but when she was not found both came back, went to the house of the appellant in Veer Kunwar Singh Colony, learnt from his parents that appellant has not returned until 9:30 P.M. P.Ws. 4, 6 came to the house of the in-laws of the appellant in their neighbourhood. The in-laws of the appellant informed P.Ws. 4, 6 that appellant is not available but he was seen drunk in the evening. Having learnt such fact P.Ws. 4, 6 became all the more apprehensive, continued with their search for whole of the night. Learned counsel for the appellant submitted that in the morning neither P.W. 4 nor P.W. 6 nor any other person on their behalf came to the house of the appellant, as such, according to learned counsel even if appellant and deceased Rani Kumari were seen together watching Matka Breaking event, thereafter in the lane by P.W. 5, the evidence is not completing the chain of circumstances to prove the guilt of the appellant as dead body of Rani Kumari has been found the next day at 12:30 P.M. in

the Rahar field in village Kaler, there is nothing to connect the appellant with the circumstances in which Rani Kumari was done to death, her dead body thrown in the Rahar field.

13. Learned counsel for the State has supported the judgment and submitted that appellant and Rani Kumari were seen together in the evening of 10.03.2012 watching the Matka Breaking event in the Veer Kunwar Singh locality. P.W. 4, mother of Rani Kumari, was the first to notice the disappearance of the two from the locality while both were watching the Matka breaking event, soon thereafter P.W. 4 began to search for Rani Kumari and was also informed by P.W. 5 and one Asha Kumari that they have seen Rani Kumari going along with the appellant in the lane. Having learnt such fact P.W. 4 called her husband (P.W. 6) who at that time was on duty as an ambulance driver in Magadh Medical Hospital situate nearby. P.W. 6 returned soon after learning that his daughter has disappeared. Both P.Ws. 4, 6 began to search for her. The search continued for the whole night. During search both P.Ws. 4, 6 had not only come to the



house of appellant but also at his in-law's house, the appellant was not available at both the places, as such, disappearance of both Rani Kumari and the appellant from the village in the evening of 10.03.2012 is established. It is further established that Rani Kumari and appellant were seen going together in the lane by P.W. 5, which fact P.W. 5 and one Asha Devi informed P.Ws. 4, 6, whereafter P.Ws. 4, 6 both intensified their search of Rani Kumari, even went to Village Kaler as also to the house of the appellant where his parents informed P.Ws. 4, 6 that he has not returned. P.Ws. 4, 6 thereafter went to the in-law's house of the appellant where also he was not found and the people told them that in the evening he was seen drunk. Dead body of Rani Kumari has been found next morning in the Rahar field. From her Post Mortem Report it is established that she has not only been sexually assaulted but also done to death by putting pressure on her mouth. The time of death as indicated by autopsy surgeon in Post Mortem Report also suggest that she was killed sometime in the night. In the circumstances, we are satisfied that it is none else



but the appellant with whom she was seen in the lane by P.W. 5 is her assailant. In the circumstances, we are not inclined to interfere with his conviction as we are satisfied that it is the appellant who was last seen with Rani Kumari in the evening of 10.03.2012 and her dead body recovered the next day from Rahar field.

14. In the circumstances, though we maintain the conviction of the appellant, we are satisfied that the instant case is not a case which can be categorized as rarest of rare case and that the appellant deserves grant of Capital punishment, accordingly, answer the reference made under Section 366 Cr.P.C. in negative, set aside the Capital sentence imposed on the appellant, award the appellant Rigorous Imprisonment for life. The appellant shall, however, be entitled for grant of remission under Section 432 Cr.P.C. after completing 14 years of jail custody including pre-trial period for the reasons indicated in Paragraphs 9 to 18 of the judgment dated 14.09.2015, passed in Death Reference No. 02 of 2015.

15. With the aforesaid modification in

the sentence imposed on the appellant, the appeal is dismissed.

(V.N. Sinha, J)

(Jitendra Mohan Sharma, J)

P.K.P./N.A.F.R.

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