

IN THE HIGH COURT OF JUDICATURE AT PATNA

Death Reference No.2 of 2014

Arising out of PS. Case No. – 20 Year- 2012 Thana –Korha, District- Katihar

The State of Bihar

.... Petitioner

Versus

Bigan Kumar Mahto, son of Ramrit Mahto, resident of Village - Rajiganj, P.S. - Korha, District - Katihar.

.... Respondent

with

Criminal Appeal (DB) No. 907 of 2014

Arising Out of PS. Case No. -20 Year- 2012 Thana -KORHA District- KATIHAR

Bigan Kumar Mahto, son of Ramrit Mahto, resident of Village - Rajiganj, P.S. - Korha, District - Katihar.

.... Appellant

Versus

The State of Bihar.

.... Respondent

Appearance :

For the Appellant : Mr. Sri Vikramdeo Singh, Advocate.
Mr. Vinay Ranjan, Advocate.
For the State : Mr. A.K. Sinha, A.P.P.
Mr. M.N. Jha, A.P.P.
For the Informant : Mr. Bimal Kumar, Advocate.
Mr. Birendra Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 27-01-2015

Instant Death Reference, Cr. Appeal

arise out of judgment of conviction, order of sentence

dated 01/05.09.2014, passed by Additional Sessions

Judge-II, Katihar in Sessions Trial No. 257 of 2012,



whereunder sole accused/appellant has been found guilty of the charge under Sections 364, 302 and 201 of the Penal Code, awarded death sentence under Section 302 of the Penal Code with further direction to pay fine of Rs. 50,000/-, in default of payment of fine to suffer Rigorous Imprisonment for two years. For the conviction under Section 364 of the Penal Code he has been awarded imprisonment for life with fine of Rs. 10,000/-, in default of payment of fine to suffer Rigorous Imprisonment for one year. For conviction under Section 201 of the Penal Code he has been awarded sentence of Rigorous Imprisonment for five years, fine of Rs. 5,000/-, in default of payment of fine to suffer six months' additional Rigorous Imprisonment.

2. Prosecution case, in short, as set out in the written-report (Exhibit-5) of the informant (P.W.6) Heera Lal Mahto is that he is a Teacher in Upgraded Middle School, Gorhi, Pachma and is attending his duty in the school every day by visiting the school from his house in Village Rajjiganj. On 19.01.2012 the informant returned from school around 5:00 P.M., learnt from his wife that their son



Suman Kumar, aged about 2 ½ years is missing from the house since she had gone to the field to bring grass leaving him alone in the house. She made inquiry from the neighbours but the child was not found. On the date of the report i.e. 20.01.2012 while the informant was searching for the child, at about 10:25 A.M. received a call on his Mobile No. 9955127974 from Mobile No. +919540670140 asking him whether his son is missing and then the call disconnected. Again the caller made another call which was picked up by the neighbour of the informant Ram Singhasan Mahto (P.W. 3). The caller asked P.W. 3 whether informant is present, P.W. 3 replied that he will call the informant and further asked the caller to disclose his identity, whereafter the caller asked him to talk relevant and disconnected. The informant thereafter tried several times to contact the caller but his mobile remained switched off. In the light of the aforesaid telephonic information received by the informant and P.W. 3, the informant requested the Officer-in-Charge, Korha Station to investigate the case.

3. On the basis of the Written Report



(Exhibit-5) Korha P.S. Case No. 20/12 dated 20.01.2012 was registered on the same day at 12:15 P.M. for the offence under Section 364 of the Penal Code by Pradeep Kumar, Officer-in-Charge, Korha Police Station (P.W.7) against holder of Mobile No. +919540670140 and he also instructed Sub-Inspector Awadhesh Singh (P.W.9) to investigate the case.

4. After registration of the First Information Report (Exhibit-5/1) investigation proceeded and accused-appellant was arrested on the same day on 21.01.2012 vide arrest memo (Exhibit-4), recorded confessional statement (Exhibit-6) also on the same day, in the light whereof dead body of the child Suman Kumar was recovered from a swamp (Daldal) by the side of river bank, inquest performed vide Inquest Report (Exhibit-3) and dead body sent for *post mortem*. Perusal of Post Mortem Report (Exhibit-8) indicates that the child died of asphyxia. The Investigating Officer having completed the investigation submitted *charge-sheet* vide Charge Sheet No. 006/12 dated 31.01.2012 against the accused-appellant for the offence under Sections



302, 201 of the Penal Code. In the light of the *charge-sheet*, cognizance was taken and after supply of police paper case was committed to the court of Sessions. Charges were framed on 09.05.2012 to which the appellant pleaded not guilty and claimed to be tried.

5. In support of the charge, prosecution examined as many as nine witnesses. P.W. 1 Ram Kishun Mahto is the co-villager of the informant and is a witness on the memo of arrest (Exhibit-4), Inquest Report (Exhibit-3). P.W. 2 Ful Kumari Devi is a housewife and grandmother of the deceased child Suman Kumar. P.W. 3 Ram Singhasan Mahto is the uncle of the informant who received the second call from Mobile No. +919540670140. P.W. 4 Meena Devi is another housewife and mother of the deceased child. P.W. 5 Ram Sagar Mahto is also a co-villager of the informant and put his signature on the Memo of Arrest of the appellant and Inquest Report (Exhibits-4, 3). P.W. 6 Heera Lal Mahto is father of the deceased and informant. P.W. 7 Pradeep Kumar is Station House Officer, Korha Police Station who received Written Report of the informant and



registered the First Information Report. P.W. 8 Dr. Ram Rekha Suman is Medical Officer, Sadar Hospital, Katihar who conducted *post mortem* on the dead body of the child Suman Kumar. P.W. 9 Awadhesh Singh is the Investigating Officer of the case.

6. Learned counsel for the appellant has assailed the findings recorded in the impugned judgment on the ground that the appellant was in no manner connected with the present crime and perhaps has been implicated in the case as he is a convict for the offence under Section 364 of the Penal Code in an earlier case in which his appeal is pending before this Court for hearing as in the said case also vide judgment dated 27.02.2013 passed by *Ad hoc* Additional Sessions Judge-II, Katihar he was convicted for the offence under Sections 364A, 302, 201/34 of the Penal Code lodged in connection with a case of kidnapping of a child vide Sessions Trial No. 433/2010 arising out of Barari P.S. Case No. 66/10. It is submitted that in the present case there is no evidence at all to connect the appellant with the crime. He is said to be implicated in this case in the



light of his confessional statement recorded before P.W. 7 Pradeep Kumar, Station House Officer, Korha Police Station on the basis that the dead body of the child was recovered at his instance and that his footprints found on the river bank near the swamp from which the child was recovered matched with his footprints taken on a platform made of plaster of parish though there is no report from any Forensic Expert that the footprints of the appellant taken on the platform of plaster of parish matched with the footprints found at the place of occurrence. In this connection, learned counsel for the appellant further submitted that the entire story that the appellant was arrested thereafter he made his confessional statement on the basis of which dead body of the child was recovered from the swamp on the bank of river is not only incorrect but a cobweb of falsehood knit by Station House Officer, Korha Police Station (P.W. 7) and the Investigating Officer (P.W. 9) to falsely implicate the appellant which would appear from a close examination of his arrest memo dated 21.01.2012 (Exhibit-4), confessional statement dated 21.01.2012 (Exhibit-6) and Inquest Report of the



child dated 21.01.2012 (Exhibit-3). From perusal of arrest memo (Exhibit-4) it would appear that appellant was arrested on 21.01.2012 at 9:15 P.M. From perusal of confessional statement of the appellant it, however, appears that he recorded confessional statement before Sub-Inspector Pradeep Kumar, Station House Officer, Korha Police Station on 21.01.2012 at 15:15 hours near Rajjiganj Chowk. The Inquest Report of the deceased Suman Kumar (Exhibit-3) indicates that his dead body was recovered from the swamp of river Borodhar on 21.01.2012 at 4:45 P.M. It is submitted that time of arrest, recording of confession, on the basis of which dead body of the child Suman Kumar was recovered, cannot be synchronized with the time of his arrest on 21.01.2015 at 9:15 P.M., it would appear that confession was made at 3:15 P.M. whereafter Inquest Report was prepared at 4:45 P.M. but the appellant was arrested later on at 9:15 P.M., which is not even supported by the two police officer, Pradeep Kumar (P.W.7), Awadhesh Singh (P.W. 9), as they have consistently deposed in their statement that appellant was first arrested whereafter he recorded

his confessional statement on the basis of which recovery of the dead body was made.

7. Aforesaid evidence of the two police officers cannot be relied upon in view of the time of arrest, recording of confessional statement, recovery of dead body, indicated in arrest memo, confessional statement and Inquest Report (Exhibits-4, 6 and 3), authenticity of which could not have been questioned by either the author of the three documents or by the witnesses P.Ws.1, 5, the villagers who put their signature as a witness on the memo of arrest and the Inquest Report (Exhibits- 4, 3).

8. Counsel for the State though supported the judgment but could not refute the date, time of arrest, confession made by the appellant and recovery of the dead body.

9. In view of the rival submissions made by the counsel for the parties, we have examined the prosecution case as set out in the evidence of the informant (P.W.6), his wife (P.W. 4), his mother (P.W. 2) that the son of the informant Suman Kumar, aged about 2 ½ years was gagged to death by the appellant and his dead body thrown on the bank of



river Borodhar which was recovered in the light of the confessional statement of the appellant recorded on 21.01.2012 at 3:15 P.M. In this connection, we have perused the arrest memo of the appellant (Exhibit-4) dated 21.01.2012 and found that appellant was arrested on 21.01.2012 at 9:15 P.M. from near the bamboo bit of Bihari Mahto near the bank of Borodhar river in presence of P.Ws. 5, 1. We also perused the confessional statement of the appellant (Exhibit-6) perusal whereof indicates that the same was recorded on 21.01.2012 at 3:15 P.M. We also perused the Inquest Report of Suman Kumar (Exhibit-3) which is dated 21.01.2012, perusal whereof indicates that the dead body of the child was recovered on 21.01.2012 at 4:45 P.M. from the midst of Borodhar river in Village- Kuria within Barari Police Station in Katihar district. Place of arrest of the appellant as also the place of recovery of the dead body of deceased Suman Kumar is almost at the same place. Confessional statement of the appellant (Exhibit-6), however, has been recorded at Rajjiganj village Chowk on 21.01.2012 at 15:15 hours. In case the appellant was arrested at 9:15 P.M. from Village-



Kuria within Barari Police Station near the bank of Borodhar river by the side of bamboo bit of Bihari Mahto, how could he record his confessional statement earlier at 3:15 P.M. on the same day at Rajjiganj Chowk which led to recovery of the dead body at 4:45 P.M. from the bank of river Borodhar vide Inquest Report dated 21.01.2012 (Exhibit-3). The evidence of the Investigating Officer as also the officer who recorded confessional statement of the appellant (P.Ws. 9, 7) including the evidence of the witnesses in whose presence the Inquest Report of the deceased and the arrest memo of the appellant was prepared does not explain the aforesaid infirmity found in the three documents which is the sheet-anchor of the entire prosecution case. In this connection, we may also refer to the evidence of the informant (P.W. 6) in Paragraph 2 that footprints were found near the place from where dead body of Suman Kumar was recovered and the police party investigating the case also took photographs of the footprints found near the place of occurrence which was matched with the footprints of several persons including that of the appellant but the footprints



found at the place of occurrence matched with the footprints of the appellant alone. In this connection P.W. 9 also deposed in Paragraph 15 that he had obtained footprints of the appellant on plaster of parish and the photographs of the footprints available at the place of occurrence. From the evidence of P.W. 9 it, however, does not appear that the footprints of the appellant was matched with the photograph of the footprints taken from the place of occurrence. Though informant (P.W. 6) did state that the footprint of the appellant matched with the photograph of the footprint taken from the place of occurrence but there is no report to establish such fact. In view of the infirmity in the timing of the arrest, recording of confession by the appellant, which led to the recovery of the dead body and his footprints having not matched with the footprint found at the place of occurrence, in our opinion, there is no basis at all to maintain the conviction of the appellant.

10. As we have not found any material to maintain the conviction of the appellant, the reference made by the trial court is answered in

negative. Appeal is allowed, impugned judgment set aside, appellant is acquitted of the charge levelled against him, directed to be released from jail custody forthwith, if not wanted in any other case.

(V.N. Sinha, J)

(Rajendra Kumar Mishra, J)

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

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