

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.141 of 2009

Arising Out of PS.Case No. -190 Year-2002 Thana –Gardanibagh District- PATNA

- =====
1. Meena Sharma, wife of Krishna Sharma
 2. Krishna Sharma, son of Dashrath Mistri
- Both residents of village-Gira, P.S. Obra, District-Aurangabad and at present
Keshri Bhawan, Shivajee Path, Yarpur, P.S. Gardanibagh, District-Patna.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Shri. Vikram Deo Singh, Advocate (Amicus Curiae)
Shri Shyama Kant Singh, Advocate(Amicus Curiae)

For the Respondent/s : Shri Dilip Kumar Sinha, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

C.A.V. JUDGMENT

(Per: HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL)

Date: 14. 05. 2015

This criminal appeal is directed against the judgment dated 18.6.2008 passed by the 9th Additional Sessions Judge, Patna, in Sessions Trial no.652 of 2003 by which the appellants were convicted under Sections 364, 302/34 and 201 of the Indian Penal Code. They were heard on the point of sentence on 21.6.2008 and were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.25,000/- each and in default of payment of fine were directed to undergo five years rigorous imprisonment for committing the offence under Section 302/34 of the Indian Penal Code and they have also been sentenced to rigorous imprisonment for ten years under Section 364 of the Indian Penal Code and three years rigorous imprisonment for the

offence punishable under Section 201 of the Indian Penal Code. However, all the sentences have been directed to run concurrently.

2. The prosecution case, in brief , is that Golu aged about four years, son of the informant Arun Kumar Singh (P.W.8), was found missing from 2 P.M. on 18.3.2002. The informant gave information to the Gardanibagh Police Station and came to know that appellant Krishna Sharma, in collusion with his wife, appellant Meena Sharma had caused Golu to disappear. The informant and others enquired from the appellant Krishna Sharma, who confessed the kidnapping of son of the informant and told that the child had been kept with his friend Pappu at Bangali Tola, Mithapur and gave a letter to the informant and asked him to go to Pappu from whom he would get his son. It has been alleged that the appellants in collusion with their friend, Pappu, had caused to disappear the aforesaid son of the informant. The written information, to this effect, was given to the officer-in-charge of Gardanibagh Police Station, on the basis of which Gardanibagh P. S. Case no. 190 of 2002 was registered on 21.3.2002. After investigation chargesheet was submitted against the appellants. The case was committed to the court of sessions. After trial, both the appellants have been convicted and sentenced as aforesaid.

3. The defence of the appellants as evident from the cross-examination is total denial of the offence and they have been

falsely implicated in this case.

4. Learned Amicus Curiae has submitted that there is no eye witness to the occurrence. No one has claimed that he had seen the child being killed by the appellant. The prosecution case is based on the circumstantial evidence. P.W.5 (Manju Devi) claims to have identified the appellant Krishna Sharma, who was having a child in his lap and later on, she had also seen a woman, who had later been identified as Meena Sharma. But from careful consideration of her evidence, it appears like a cock and bull story has been carried upon by the learned trial court. There is also no link to connect the appellants to cause the death of the child (deceased). At best only the recovery part can be considered to be proved against the appellant Krishna Sharma at whose instance the dead body has been recovered. The evidence of P.W.3 (Kameshwar Rai) is also not helpful to the prosecution who had stated that he saw the appellants in the mid-night at the back side of Keshri Bhawan where the septic tank was situated. He had stated that his cattle shed was behind the said Keshri Bhawan and all of a sudden he woke up in the mid-night and saw the appellants and on his query, they told that some article had been lost there and they were searching the same. Thereafter, P.W.3 went to sleep. P.W.3 had not stated that at that time he saw the appellants with the deceased nor had seen the appellants killing Golu (deceased).

He has also submitted that five golden principles for appreciation of the circumstantial evidence, as enunciated by the Hon'ble Apex Court in the case of *Sharad Birdhichand Sarda v. State of Maharashtra* reported in *AIR 1984 SC 1622*, are not present in the instant case and, as such, benefit of doubt should be given to the appellants.

5. Learned counsel for the State submits that the prosecution has succeeded to substantiate its case beyond reasonable doubt and all the circumstances go against the appellants only to connect that they alone had committed the offence. There is no doubt that there is no eye witness to the occurrence of causing murder of the deceased. In case of no eye witness, the prosecution has to collect the evidence and the link to connect the crime with the accused. In this case the prosecution has been able to substantiate its case beyond reasonable doubt and has been able to connect the link between the deceased and the appellants to show that it is the appellants who have committed the offence. The appellants had made confession before the police which led to recovery of the dead body of the deceased.

6. The prosecution has examined the following witnesses to prove its case. Raghvendra Kumar Singh (P.W.1), Dharmendra Kumar (P.W.2), Kameshwar Rai (P.W.3), Shyam Kishore Singh (P.W.4), Manju Devi (P.W.5), Tapeswar Singhm(P.W.6), Sumanveer Singh (P.W.7), Arun Kumar Singh

(P.W.8), Kauleshwar Pd. Singh (P.W.9), Chandra Shekhar Vidyarthi (P.W.10) and Dr. Arbind Kumar Singh (P.W.11).

7. P.W.9 is the investigating officer, who has stated that on 21.3.2002 Gardanibagh P. S. Case no. 190 of 2002 was registered on the basis of the written report of Arun Kumar Singh (P.W.8) for the offence punishable under Sections 361 and 363A of the Indian Penal Code against the appellants and Pappu and the letter written by Krishna Sharma addressed to Pappu was enclosed with that written report and the formal F.I.R. The signature of the officer-in-charge has been marked as Ext.3/1. After getting the charge of investigation P.W.9 started investigation. He took the re-statement of the informant. He has also stated that the informant had given information vide Sanha no. 560 dated 8.3.2002 which was also given to the Police Control Room. He inspected the place of occurrence. It was situated at Muhalla-Yarpur, Rajputana, the western side of Shibaji Path. The road was linked with Road No. 1, Gardanibagh, adjacent to Keshri Bhawan. It was the southern side of Bijay Niketan and northern side of Battisha Bhawan. He also took the statement of the witnesses, Anita Devi, Balram Pd. Singh, Shyam Kishore Pd. Singh, Dharmendra Kumar (P.W.2), Bikas Ranjan, Raghavendra Kumar Singh (P.W.1), who had supported the prosecution case. On 22.3.2002 the appellants were arrested. After arrest Krishna Sharma



confessed his guilt which was recorded by Dy. Superintendent of Police, Chandra Shekhar Vidyarthi (P.W.10). The confessional statement of Meena Devi was recorded by him (P.W.9) under the guidelines of Dy. Superintendent of Police (P.W.10) which are Ext. nos. 4 and 4/1. On the basis of the confessional statement, the dead body of the deceased was recovered from the septic tank, situated in the western side and behind the Keshri Bhawan. The inquest report was prepared by him. He has also stated that on the basis of confessional statement of the accused Krishna Sharma, two tabizes were recovered from the house of Krishna Sharma which are the material Exts. A and B. The seizure list of the Tabizes is Ext.5, the copy of which was given to the appellants. He had also recorded the statement of the seizure list witnesses on 23.3.2002. He handed over the charge of investigation to Sri Chandra Shekhar Vidyarthi (P.W.10), Dy. Superintendent of Police. The statement of the witness Manju Devi (P.W.5) was also recorded under Section 164 of the Code of Criminal Procedure on 10.4.2002. He had identified both the appellants in the dock.

In his cross-examination he stated that he had not completed the investigation. He only held investigation for three days. The inquest report was prepared on 22.3.2007 at 5 P.M. He had also stated that both eyes were coming out and tongue was also



perturbed. The skin was also peeled. He had also stated that in the sanha, no suspicion was raised against the appellant. Manju Devi (P.W.5) had stated in her statement that she could identify the accused after seeing them. He had not conducted the Test Identification Parade. In para-29 he had stated that Tabiz were recovered from the house of the appellants which was closed and it was opened by the appellants.

8. P.W.10 is the second investigating officer. He had stated that in March, 2002 he was Dy. Superintendent of Police (Probation) and posted at Gardanibagh Police Station. He recorded confessional statement of appellant, Krishna Sharma and on his direction the investigating officer had recorded the confessional statement of Meena Devi. The confessional statements are Exts. 4 and 4/1. The signatures of Krishna Sharma and Meena Devi are Exts. 4/2 and 4/3. Both of them had also signed on the confessional statements of each other. On the basis of the confessional statement the dead body of the kidnapped child Golu, son of Arun Kumar (P.W.8) was recovered from the septic tank. The inquest report (Ext.6) was prepared by the investigating officer (P.W.9). On the basis of the confessional statement Tabiz of the deceased, which were wrapped in a paper, were recovered from the house of the appellants. According to their confessional statements, the seizure list was

prepared and after investigation he submitted chargesheet against the appellants under Sections 364, 302 and 201 of the Indian Penal Code. He had also identified both the appellants in the court. He had also been cross-examined. There was nothing to be noted important of his cross-examination.

9. P.W.1 is the Mama of the deceased. He had stated that on 18.3.2002 at about 2 P.M. his bagina came out from his house to play but he disappeared. Even after search he could not be traced out. The information was given by Arun Kumar Singh (P.W.8) in the police station. On 20.3.2002 after showing the photographs of the deceased, a lady identified the photographs and she told that on 18.3.2002 he saw a male and a female taking the child. The child was weeping. She claimed to identify them. He gave this information to P.W.8. On the basis of the description of the appearance of the male and female narrated by that lady, the police arrested the appellants on 20.3.2002. The police took the statement of the accused and thereafter the dead body of the child was recovered from the septic tank behind the Keshri Bhawan. The dead body was sent for post mortem and thereafter it was returned to the P.W.1 and the others.

In his cross-examination he stated that he had not seen the occurrence of kidnapping the deceased.

10. P.W.2 Dharmendra Kumar is the cousin brother of



the deceased who disappeared on 18.3.2002 while playing outside the house. On 20.3.2002 while crossing near Gaya Railway line gumti and showing the photographs of the deceased, Manju Devi (P.W.5) identified the photograph and told that she had seen that child at 3 P.M. who was taking by the male and the female was also following the male. The child was uttering 'Ma' 'Ma'. Later on, during search, the appellants confessed that they had caused to disappear Golu and Golu was handed over to Pappu. P.W.2 and others went there but Pappu could not be traced out. Thereafter, F.I.R. was lodged and the police harassed the appellants. On the basis of confessions, the dead body was recovered from the septic tank.

In his cross-examination he stated that he had not seen any one kidnapping Golu or could not see who had caused the death of Golu (deceased). The houses of Golu and the appellants are side by side.

11. P.W.3 Kauleshwar Rai has also stated that Golu aged about 4 years and son of P.W.8 all of a sudden disappeared. The house of the accused is behind Keshri Bhawan where there is the septic tank. He saw the appellants in the mid-night. His cattle shed is also behind Keshri Bhawan. All of a sudden he woke up and saw the appellants there. On query, they told that they were searching their lost article. Thereafter, he went to sleep. On 22.3.2002 the dead body

of Golu was recovered from the septic tank. He had identified the appellants in the court.

In his cross-examination he stated that on 18.3.2002 he had not seen the appellants taking Golu nor did he see the appellants killing Golu.

12. P.W.4 Shyam Kishore Singh is the uncle of the deceased. He stated that Golu came out from his house Vijay Niketan at 2 P.M. and was going to the house of Keshri Bhawan but all of a sudden he disappeared in the way. His father Arun Kumar Singh (P.W.8) came from office at about 4 P.M. and searched Golu. Thereafter, he gave a sanha report at the police station. He also searched Golu after taking the photograph of Golu and he (Golu) was searched in the surrounding. After two days a lady identified the photograph and told that she had seen that child two days ago crossing the railway line with a male and a female, who were taking the child towards eastern side. She told about the description of the appearance of the male and female. From that description of appearance it appears she had identified them that they were Krishan Sharma and Meena Devi. Both of them were enquired into. They told that the child was with Pappu in Mithapur 'B' Area. The information was given to the police station. Thereafter, the police personnel made enquiry and at the instance of the appellants the dead body of Golu

was recovered.

In his cross-examination, he stated that he had not made any statement before the police that the appellants kidnapped the child and put in the septic tank.

13. P.W.5 (Manju Devi) stated that prior to Holi in the year 2002 at about 3 P.M. on Monday when she was cleansing her utensils on the side of the railway line, she saw a male taking a child aged about 4 years towards east wearing a rosy shirt and maroon paint. When he was crossing near her, the child uttered 'Ma' 'Ma'. Thereafter, the man took him (deceased) in his lap and told he was taking him to his mother. The man took him towards the eastern side. After a moment a female of 'sawala' complexion was following the man but she did not enquire her. On the next day while she was cleansing his utensils at 3 P.M., a person telling himself to be his Mama showed the photograph and she identified and said that she saw a male taking that child. On the next day (Wednesday) the police came and took that male and female in the police vehicle. She identified both of them and told the police. The police asked her to come to Gardanibagh Police Station. On the next day (21.3.2002) she heard that dead body of a child was recovered from a septic tank. She also went there and identified the dead body of the child which she had seen earlier. She had identified both the accused in the dock.

In her cross-examination she stated that while she was cleansing her utensils, no one was there. She was not knowing the police officer prior to the occurrence. Her statement was recorded by the Magistrate. She had been taken to the court by the police.

14. P.W.6 is a seizure list witness. He stated that the lockets (tabizes), made of silver and copper borne by Golu, were recovered from the house of the appellants and they were marked as Exts. A and B. The seizure had also been made in his presence. They were witnessed by him and another witness. Krishna Sharma was living in the house of Ganesh Singh at Yarpur as a tenant and the house was known as Keshri Bhawan. He identified both the accused.

In his cross-examination he stated that the house of Ganesh Singh is near his house and the tabiz and locket were seized in his presence and a seizure list was prepared.

15. P.W.7 is also the seizure list witness who had deposed as P.W.6.

16. P.W.8 is the informant and the father of the victim child. He stated that on 18.3.2002 at 2 P.M. he was in his office. When he returned at about 4-30 P.M. he came to know from some women that his son, Golu aged about 4 years, was disappearing. A written information was given in the Gardanibagh Police Station. He also searched hither and thither and some persons out of sympathy



accompanied him. In course of it, on 20.3.2002, a lady near the railway line identified the photograph of his son Golu and told her that on 18.3.2002 at 3 P.M. she had seen a man taking that child and a lady was following him. At that time she was cleansing her utensils. She gave the description of appearance of both of them. On the basis of which at about 6 P.M. he gave this information to the appellants and enquired as to whether they had seen his son or not. They told that he would get his son. On the same day (20.3.2002) they told that they had handed over the child to Pappu in Bangali Tola and Krishna Sharma (appellant) gave him a letter addressed to Pappu. The letter has been marked as Ext.2. Thereafter, he went to the police station. On 21.3.2002 he showed the letter to the police station and also gave a written information to the officer-in-charge which has been marked as Ext.3. The F.I.R. was lodged and on the basis of which search was made but both the accused were disappearing from the house. Pappu was also searched in Bangali Tola and he was also not found but it came to the notice of the police that Pappu was living in his sasural at Lodhipur, Gandhi Maidan. On 23.2.2002 the police arrested the appellants who confessed their guilt and on the basis of which the dead body of the child was recovered from the septic tank behind Keshri Bhawan. The whole body of the child was rotten, the skin of the upper side was peeled off, eyes and tongue were coming out and



hair of his head was disappearing. There was also sign of injury on his face. Both the accused were living in the Keshri Bhawan and from the septic tank the dead body of the child was recovered. He has also stated that his son (deceased) was wearing two lockets made of silver and copper. He identified them which had been marked as material Ext. nos. A and B. The accused had confessed their guilt before the police and on their confessional statements lockets were recovered from their house and the dead body was recovered from the septic tank. After post-mortem of the dead body of the deceased, the dead body was handed over to him, which was disposed of at the bank of river Ganga. He has identified both the appellants.

In his cross-examination he stated that he was living in the house on rent. It was double storied. Ten years ago his elder brother Shyam Kishore Pd. Singh (P.W.4) was also living in the Keshri Bhawan, a three storied building. He was living in Vijay Niketan, the house of Awadhesh Bihari Singh, which is adjacent to the north of Keshri Bhawan. In his cross-examination, there is no material contradiction to discard his evidence.

17. P.W.11 Dr. Arbind Kumar Singh held the post-mortem examination on the dead body of the deceased Golu @ Abhishek Kumar, aged about 4 years, and found the following ante-mortem injuries.

- (i) One contusion 1" x 1" over lower left eye lid.
- (ii) One contusion 2" x ½" on right side of neck from mid line towards mendible.
- (iii) Contusion of tip of tongue.

On dissection, blood clots were found just beneath the injury no. (i). Blood clots were found on the right side of epiglottis. In the opinion of the doctor the time elapsed since death is 3 to 5 days. Cause of death is asphyxia due to strangulation. Nature of weapon was hard and blunt substance and its impact. Post-mortem report has been marked as Ext. 8.

In his cross-examination the defence has not been able to take any contradiction with the prosecution case.

It appears that cause of death of the deceased was asphyxia due to strangulation.

18. It appears from the prosecution evidence that the entire case is based on the circumstantial evidence. There is no eye witness to the occurrence of kidnapping or murder of the deceased. The circumstances as noticed earlier are as follows :-

19. On 18.3.2002 the informant came to know that his son Golu, aged about 4 years, was missing while he had gone out from his house for playing. Golu was searched but he could not be traced out. Thereafter, informant gave a written sanha at the



Gardanibagh Police Station. The search was made by the informant and his relatives. P.W.1 and P.W.2 in course of search met with P.W.5, an unknown lady who identified the photograph of the deceased (Golu). P.W.5 gave description of the appearance of a male, who was taking the child and thereafter also a female who was following the male. On the description of the appearance it was noticed that they were the appellants. They were asked about deceased Golu who accepted that Golu had been handed over to Pappu, who was residing at Bangali Tola, Mithapur. The appellant Krishna Sharma gave a letter addressed to Pappu to the informant from where he could get his son.

The informant went to the police station and showed the letter given by Krishna Sharma addressed to Pappu. He gave a written information regarding the kidnapping of his son, Golu, in which the letter of Krishna Sharma was enclosed. Gardanibagh police instituted Gardanibagh P.S. Case no. 190 of 2002 under Sections 361 and 363A of the Indian Penal Code. The police searched the appellants. Both of them had disappeared. The police went to Bangali Tola in search of Pappu but Pappu was not found and police came to know that Pappu was living in his sasural at Lodhipur, Gandhi Maidan, Patna. Police went there but Pappu was not found. The appellants were also found absconding.

20. Again the police searched and arrested the appellants. Both the appellants made confession before the police and at their instance, the dead body of Golu was recovered from the septic tank behind Keshri Bhawan.

21. The police took the appellants to their room which was locked. After unlocking the room two tabizes, made of silver and copper, wrapped in a paper were recovered (material Exts. A and B) which were worn by the deceased (Golu).

22. P.W.5 Manju Devi made statement under Section 164 of the Code of Criminal Procedure regarding identification of the dead body of the missing child Golu recovered from the septic tank where she had gone to see after hearing that dead body of a child had been recovered from a septic tank.

23. P.Ws. 6 and 7 are the seizure list witnesses, who identified the lockets (Tabizes) which were recovered from the room of the appellants. P.W.8 has also identified the appellants. P.Ws. 9 and 10 are the investigating officers in whose presence confession was made and the confessions of both the appellants were recorded by them leading to the recovery. The confessional statement is also corroborated by the medical evidence. The confessional statement of the appellants (Ext.4 and Ext.4/1) had led to the recovery of the dead body of the deceased and also the tabizes of the deceased which had

been identified by P.Ws. 6, 7, 8, 9 and 10.

24. Considering the facts and circumstances stated above, it appears that the circumstances, as it appears from the prosecution evidence, cumulatively point out unerringly at the appellants to be guilty of the offence. In support of our decision the judgment in the case *Devidas Ramsundar Shukla v. State of Maharashtra reported in (2008) 12 SCC 755* may be referred, in which several decisions including Sharad Birdhichand Sarda AIR 1984 SC 1622 have also been considered. The chain of evidence is so complete as there is no reasonable ground for the conclusion with the innocence of the accused and it shows that in all human probability the act has been done by the appellants. The facts established by the prosecution by the chain of circumstances are consistent with the hypothesis of the guilt of the accused. The chain of evidence is complete and there is no reasonable ground for a conclusion consistent with the innocence of the accused and the chain, as such, shows that within all human probability the act has been done by the appellants.

25. For the reasons stated above, we do not find any ground to interfere with the impugned judgment. This appeal has got no merit. As such, it is dismissed.

26. Learned Amicus Curiae has tried his best to point

out the fallacy in the prosecution case with utmost labour and care but the evidence is so compact and convincing that they could not demolish the findings of the learned trial court. Learned Amicus Curiae Shri Vikram Deo Singh has already expressed that he would not take any fee. As such, shri Shyama Kant Singh Amicus Curiae is entitled to get his fee from the Patna High Court Legal Aid Committee. Let a copy of the first page and last page be given to him so that he may get his fee from the said Committee.

27. Let the lower court records be sent to the learned trial court with a copy of the judgment.

(Amaresh Kumar Lal, J)

Dharnidhar Jha, J. I agree.

(Dharnidhar Jha, J)

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