

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.972 of 2008

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Sukra Kisku @ Sukara Kisku son of Phagu Kisku, R/O Village- Garha, PS-Chakai,
Distt-Jamui.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Umesh Prasad, Adv.

Mr. Mritunjay Kumar, Adv.

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE ADITYA KUMAR TRIVEDI)

Date: 13-03-2015

Challenge in this appeal is judgment of conviction dated 23.06.2008 and sentence dated 30.06.2008 passed by Presiding Officer, FTC-3rd , Jamui in Sessions Trial No. 281/2000, G.R. No. 800/1999 whereby and whereunder the sole appellant, Sukra Kisku @ Sukara Kisku has been found guilty for an offence punishable under Sections 302 IPC and sentenced to undergo RI for life as well as under Section 201 IPC and sentenced to undergo RI for three years with a further direction to run the sentences concurrently.

2. Informant, Barku Kisku (PW-2) gave his Fard-e-beyan on 12.08.1989 disclosing therein that his daughter, Surajmani Kisku (deceased) who was married with Pandu Marandi about 20 years ago and out of the aforesaid marriage, begot two daughters and one son, became widow on account of death of Pandu Marandi. She came back to her *Naihar* and was residing there. During course thereof, it has



also been disclosed that she developed intimacy with Sukra Kisku @ Sukara Kisku and on account thereof, she went to his house and began to reside with him. Seeing this, he was of the view that now marriage be solemnized in between them. However, during midst thereof, subsequent development arose whereunder Sukra Kisku began to torture his daughter. His daughter wanted to return back his house, however, she was prevented. On 09.08.1999, he after hearing cry of his daughter ran and found her in a Gali lying and having been caught hold by Manohar Tudu and Dhani Tudu, while Sukra Kisku had pounced upon her chest and began to assault with fists and slaps. He intervened. He further came to know that on 11.08.1999 at about 10:00 A.M. that they, after committing murder of his daughter, had taken away the dead body for burying so that no one could know about the aforesaid event and for that purpose they were carrying the dead body towards Delwa river. Because of the fact that his daughter's daughter was ill his wife was not present at his house hence, he could not be able to inform the police on 11.08.1999.

3. After having registration of the case bearing Chakai P.S.Case No.62/1999, investigation commenced and concluded by way of filing charge-sheet against the sole appellant, Sukra Kisku @ Sukara Kisku on account of his presence during course of investigation while investigation against remaining two continued. Subsequent thereof, after taking cognizance as well as supply of police paper, the case was committed to the court of sessions where,

after framing of charge, the trial commenced and concluded in a manner, subject matter of the instant appeal.

4. The defence as is evident from the mode of cross-examination as well as statement recorded under Section 313 Cr.P.C., happens to be complete denial as well as that of false implication.

5. In order to substantiate its case, the prosecution had examined altogether five PWs out of whom PW-1, Binod Kisku, PW-2, Baraku Kisku, PW-3, Pokala Kisku, PW-4, Dr. Raman Kumar and PW-5, Prasidha Narain Singh.

6. Now coming to the status of the witnesses, it is apparent that on account of non examination of Investigating Officer, PW-5 was examined to exhibit certain documents, being so, his status happens to be formal in nature. In likewise manner, PW-4, Raman Kumar exhibited postmortem report as the doctor, who had conducted postmortem, had not been examined. From his evidence, it is apparent that he had not mentioned the fact that either the doctor who had conducted postmortem was not available on account of his death nor on account of non availability due to certain reason and being so, there happens to be non compliance of Section 32 of the Evidence Act. Hence, his evidence also appears to be worthless.

7. Now coming to the evidence of PWs 1, 2 and 3, the material witnesses, it is apparent that none had disclosed the fact regarding presence of deceased in company of appellant right from 09.08.1999 to 11.08.1999, the alleged date of commission of murder.



Furthermore, it is also apparent that they have not shown their status to be eyewitness to the occurrence. Moreover, none of the witnesses have had stated that deceased was taken away by the accused after assault on 09.08.1999. In the aforesaid background, the evidence rests upon circumstantial evidence. To have a case proved under circumstantial evidence on the theory of last seen, it is obligatory on the part of the prosecution to establish the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. Even in such case, the Courts should look for some corroboration. When the evidence of these three PWs are gone through, it is apparent that PW-1 had simply stated that he came to know that Sukra Kisku @ Sukara Kisku, Manohar Tudu and Dhani Tudu were engaged in assaulting, Surajmuni Kisku whereupon, he had gone and seen them. Subsequently thereof, he came to know after two days that accused persons have taken away the dead body of Surajmuni Kisku towards Delwa river. Therefore, from his evidence, it is apparent that neither he happens to be on the point of murder of deceased, nay on the point that in between 09.08.1999 to 11.08.1999, he had seen the deceased, Surajmuni Kisku in company of this appellant.

8. PW-2 is the informant who had reiterated the same version whatever stated by him during course of recording of *Fard-e-beyan* that he had seen these three accused persons assaulting the

deceased on 09.08.1999. Then he had stated that after two days, he came to know that accused persons have taken away the dead body towards Delwa river and concealed it. When police arrived, he had given his Fard-e-beyan. So from his examination-in-chief alone, it is apparent that same sort of deficiency persists in his evidence.

9. PW-3 is Pokala Kisku who had also stated the prosecution case in same version stating that on 09.08.1999, he had seen the accused persons assaulting Surajmuni Kisku. Two days subsequently thereof, he came to know regarding death of Surajmuni Kisku as well as having her dead body concealed by the accused persons in Delwa river.

10. Therefore, from the evidences available on the record, it is evident that there happens to be serious infirmities persisting in their evidences as none of them have been able to substantiate the prosecution case on the theory of last seen as they failed to depose having the deceased in company of appellant from 09.08.1999 till her death. Apart from this, on account of deficiency on the part of prosecution to have the postmortem properly exhibited, the cause of death at least to the extent that deceased had died on account of assault which was inflicted over her on 09.08.1999, has not been proved.

11. Furthermore, it is apparent from the charge that appellant has been charged for an offence punishable under Sections 302, 201 of the IPC for an occurrence to have committed on

09.08.1999 which does not happen to be case of the prosecution, because of the fact that there happens to be specific assertion that on 09.08.1999, the deceased was assaulted with fists and slaps by the accused in a Gali and two days thereafter, prosecution party came to know regarding death of deceased. Therefore, certainly neither happens to be the occurrence of murder committed on 09.08.1999 nor the concealment of the dead body to screen themselves legal prosecution, on 09.08.1999. In likewise manner, the statement recorded under Section 313 of the Cr.P.C. is also found deficient one. Because of the fact that the incriminating materials whatsoever been confronted to the appellant also happens to be of the 09.08.1999.

12. The cumulative effect, as referred above, did not justify the finding recorded by the learned lower Court. Consequent thereupon, the judgment of conviction and sentence is set aside. The appeal is allowed. The appellant is acquitted. Appellant is under custody, hence is directed to be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J)

(Aditya Kumar Trivedi, J)

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