

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction and order of sentence, dated 08.02.2007, passed by Shri Ravindra Prakash Sinha, Additional Sessions Judge, Supaul in Sessions Trial No. 100/05, arising out of Ratanpura P.S. case No. 7 of 2004, G.R. No. 235 of 2004)

Criminal Appeal (DB) No.446 of 2007

1. Md. Isaruddin, son of Md. Saini Mian,
2. Md. Nizam @ Niyam @ Nizamuddin, son of Md. Imamuddin.
Both are residents of Village- Dubiyahi Panchparariya, P.S.- Ratanpura,
District- Supaul. Appellants
Versus
The State of Bihar Respondent
with

Criminal Appeal (DB) No. 372 of 2007

1. Manoj Kumar Mehta, Son of Bhutai Mehta,
2. Bijay Mehta, Son of Mahadeo Mehta,
Both residents of Village- Panchparia, P.S.- Ratanpura, District- Supaul
.... Appellants
Versus
The State of Bihar Respondent
with

Criminal Appeal (DB) No. 416 of 2007

Md. Gafur, son of Md. Ushman, resident of Village- Dubiyahi Panchpararia, P.S.-
Ratanpura, District- Supaul. Appellant
Versus
The State of Bihar Respondent

Appearance :
(In CR. APP (DB) No. 446 of 2007)
For the Appellant/s : Mr.
For the Respondent/s : Mr. Abhimanyu Sharma, Addl. P.P.
Mr. Neeraj Kumar @ Sanidh, Amicus Curiae.

(In CR. APP (DB) No. 372 of 2007)
For the Appellant/s : Mr. Parmeshwar Mehta, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, Addl. P.P.

(In CR. APP (DB) No. 416 of 2007)
For the Appellant/s : Dr. Rajesh Kumar Singh, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, Addl. P.P.

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH
and
HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)
Date: 02-04-2015

All the three appeals, constituting five appellants, have been filed against the judgment of conviction and order of sentence, dated 08.02.2007, passed by the Additional Sessions Judge, Supaul in Sessions Trial No. 100/05, arising out of Ratanpura P.S. case No. 7 of 2004, G.R. No. 235 of 2004, whereby the learned trial court convicted all of them under Sections 376/34, 302/34 and 120B of the Indian Penal Code and sentenced them to suffer imprisonment for life under Section 376/34 and 302/34 of the Indian Penal Code. No separate sentence was passed under Section 120B of the Indian Penal Code. However, both the sentences were directed to run concurrently.

2. The prosecution case as unfolded in the statement of Ramdeo Mehta, son of Sahdeo Mehta, resident of Village-Panchparariya, P.S.- Ratanpura, District- Supaul, recorded by S.I. Mithilesh Prasad, officer-in-charge of Ratanpura police station, on 24.04.2004 at 11.45 A.M. at his house, in short, is as follows:

On 23.06.2004 at about 2.00 P.M., the informant went out along with his wife (P.W.6) leaving their daughter Babita Kumari, aged 13 years, alone in the house. The informant had to do some crushing of paddy at Ratanpura, whereas his wife was going to her paternal house to attend the marriage function. While leaving the house, the informant assured her daughter that he would return within



two hours and in case she felt hungry, she can eat Chura-Murhi. As soon as they arrived at the embankment, they saw co-villagers, Md. Nizam, Md. Israuddin, Md. Gafur and Rambriksh Sharma coming from the opposite side and going towards village. On seeing them, they enquired, as to where they were going. The informant narrated the detail of their programme and also requested them to keep an eye on his house in the meantime. When after completing his work, the informant returned to his house at about 6.00 P.M., he did not find his daughter. He thought that she might be somewhere in the vicinity. However, as soon as he entered his house, he found his daughter lying on the ground. He tried to wake her up. As soon as, he turned her, she was found dead. There were strangulation marks on her neck. Blood was oozing from her nose and private part. He also found scratches on her elbow. The informant suspected that the accused persons raped and killed her by strangulations. According to the informant, the accused in the near past also had misbehaved with a woman.

4. On the basis of the fardbeyan of Ramdeo Mehta, a formal F.I.R. was drawn bearing Ratanpura P.S. case No. 07 of 2004 dated 24.06.2004 under Sections 376/34, 302/34 and 120B of the Indian Penal Code against four named accused persons.

5. The police, in course of investigation, apart from F.I.R. named accused, namely, Md. Nizam, Md. Israuddin, Md. Gafur and



Rambriksh Sharma, also found the involvement of co-villagers Manoj Kumar Mehta and Vijay Mehta on the basis of confessional statement of two of the accused persons. However, as Ram Briksh Sharma was absconding, charge-sheet was submitted under Sections 376/34, 302/34 and 120B of the Indian Penal Code against three named accused persons and two other persons, namely, Manoj Kumar Mehta and Vijay Mehta, showing Ram Briksh Sharma as absconder. Cognizance was taken by the learned Court and the case was committed to the Court of Sessions. After commitment of the case, charges were framed under Sections 376/34, 302/34 and 120B of the Indian Penal Code against all the accused persons. The accused persons pleaded not guilty and claimed to be tried.

6. The Prosecution in support of its case examined altogether 12 (twelve) witnesses including the doctor, who conducted the post-mortem examination, and the investigating officer; who are as follows: P.W. 1 is Md. Zakir, P.W. 2 is Ram Lakhan Mehta, P.W. 3 is Sheo Narayan Yadav. P.W. 4 is Nand Kishore Kumar, P.W. 5 is Hari Shankar Mehta, P.W. 6 is Raj Kumari Devi, P.W. 7 is Sanjay Mehta, P.W. 8 is Mahendra Mehta, P.W.9 is Ramdeo Mehta (informant), P.W.10 is Mithilesh Prasad, P.W. 11 is Dr. Arun Kumar Verma, and P.W.12 is Dr. Nutan Verma.

7. The case of the accused in the statement under Section

313 Cr.P.C. is complete denial of the occurrence. The trial court on consideration of materials on record convicted all the five accused persons under Sections 376/34, 302/34 and 120B of the Indian Penal Code and sentenced them to rigorous imprisonment for life under each of the two counts. No separate sentence was passed under Section 120B of the Indian Penal Code. All the sentences were directed to run concurrently.

8. Cr. Appeal (DB) No. 446 of 2007, which comprises of two appellants, namely, Md. Isaruddin and Md. Nizam @ Niyam @ Nizamuddin has been represented by Mr. Niraj Kumar @ Sanidh, as Amicus Curiae. Cr. Appeal (DB) No. 416 of 2007, comprising of sole appellant, namely, Md. Gaffar is represented by Dr. Rajesh Kumar Singh, Advocate, Cr. Appeal (DB) No. 372 of 2007, comprising of two appellants, namely, Manoj Kumar Mehta and Bijay Mehta is represented by Mr. Parmeshwar Mehta, Advocate. On behalf of the State Mr. Abhimanyu Sharma, Additional Public Prosecutor appeared in all the three appeals.

9. Admittedly there is no eye witness to the occurrence. The case of the prosecution is based on circumstantial evidence. The law regarding circumstantial evidence has been best set out in case of Sharad Biridhichand Sarda v. State of Maharashtra, reported in AIR 1984 SC 1622. In view of the aforesaid there cannot be any dispute to

the legal dictum that even in absence of direct evidence, conviction can be sustained if the chain of circumstances is complete and point to the guilt of the accused and accused alone.

10. In the backdrop of the well settled principles of law, we would now examine whether the prosecution has been able to establish chain of circumstances, which would unequivocally point to the guilt of the accused.

11. Before we examine the case, it would be relevant to notice the case of the appellants. Mr. Niraj Kumar @ Sanidh, learned counsel appearing as Amicus Curiae, has made the following submissions. The chain of the circumstances produced by the prosecution is not complete, so as to unerringly point to the guilt of the accused. There was inexplicable delay of 20 hours in lodging of the F.I.R., though the police station is situated only at a distance of 5 K.Ms., which casts a serious doubt on the veracity of the prosecution case. In support of his submissions, he has relied upon the decision reported in case of Thulia Kali Vs. State of Tamil Nadu, reported in AIR 1973 SC 501. All the incriminating circumstances were not put to the accused persons while recording their statement(s) under Section 313 of the Cr.P.C. and as such they were deprived of valuable rights to defend their case. The occurrence has taken place much earlier than the time projected in the prosecution case in view of the

post-mortem report. It would be simply incomprehensible to believe that the informant would ask the accused persons to keep an eye on his house when his daughter was alone and they had strained relationship.

12. Mr. Parmeshwar Mehta, learned counsel appearing for appellants Manoj Kumar Mehta and Bijay Mehta in Cr. Appeal (DB) No. 372 of 2007, submits that his case is much different than the case of appellants in Cr. Appeal (DB) No. 446 of 2007 and Cr. Appeal (DB) No. 416 of 2007. Furthermore, the appellants, whom he represents, are neither named in the F.I.R. nor have been named by any of the witnesses. They have been implicated in this case solely on the confessional statement of two of the co-accused, which is inadmissible in law.

13. In the backdrop of the defence of the accused persons, we would now examine the evidence of prosecution side. The prosecution in order to bring home the charges against the appellants examined 12 witnesses, out of these 12 witnesses, P.W.1, P.W.2, P.W.3, P.W. 4 and P.W. 8 have turned hostile.

14. Before we examine the ocular evidence, it would be relevant to notice the evidence of the two doctors, namely, Dr. Arun Kumar Verma (P.W.11) and Dr. Nutan Verma (P.W.12). Doctor Arun Kumar Verma (P.W.11) stated that the post-mortem was conducted by



Vir Kuwar Sinha, a Medical Officer of Sub-Divisional Hospital, Supaul, on 25.06.2004 at about 11.15 A.M. under the supervision of Dr. Ghan Shyan Singh, Medical Officer and Dr. Nutan Verma, who worked as Observer. He has proved the post-mortem report, which was prepared by Dr. Vir Kuwar Sinha, which was marked as Ext.4. P.W. 11 stated that as per the post-mortem report, the deceased was raped and thereafter murdered by strangulation. The hymen as well as anus of the deceased was found ruptured. According to the post-mortem report, asphyxia and throttling was the cause of death and time elapsed since death was within 84 hours. The injuries were ante-mortem in nature. Before the death, the victim was raped. He stated that as per the post-mortem report the vagina, hymen and anus were ruptured. The external examination showed protruded tongue, open eye and froth coming from mouth. Bruises were present all over neck and its upper part. Fingers marks were present on left side of her hand. According to the doctor, the decomposition had started but maggots were not present.

15. P.W. 12, Dr. Nutan Verma, supervised the post-mortem examination conducted by Dr. Vir Kuwar Sinha. In her evidence, she has fully supported the version of P.W. 11. In cross-examination, she stated that the decomposition of the body becomes complete after 72 hours and after decomposition every limb becomes swollen and in

such circumstances, it would be difficult to find out injuries on the person of the deceased.

16. From the post-mortem report, which has been marked as Ext-4 and evidence of P.W. 11 and P.W. 12, it is established beyond all reasonable doubt that the victim girl Babita Kumari was first raped and thereafter murdered by strangulation of her neck.

17. In the instant case, we find that the informant along with his wife left their house at about 2.00 P.M. The wife of the informant was going to her paternal house to attend a marriage ceremony. The informant had some paddy to be crushed at Ratanpur. As soon as they arrived near the "Bandh", the F.I.R. named accused persons were seen coming from the opposite side and were going towards their village. On seeing them, all the four F.I.R. named accused persons enquired, as to where they were going. The informant narrated the details and stated that as he would away for two hours and his daughter would be alone in the house. They may as well take care of his house and the daughter.

18. Even the defence do not dispute that the victim was raped and murdered. Their primal contention is that the deceased was raped and murdered by some one else and they have been falsely implicated in this case.

19. We would now refer the evidence of the Investigating



officer Mithilesh Prasad, who was examined as P.W.10. The Investigating Officer P.W. 10 in his deposition stated that he saw bleeding from vagina and blood had fallen in and around the place, where the deceased was lying in the room. He seized the blood stained Janghia and blood stained soil, which were all produced and marked as Ext. 5, to which the P.W. 5 was also a witness. The evidence of the investigating officer further corroborates the prosecution case that the deceased was murdered in her house after she was subjected to rape.

20. From the discussions of evidence hereinabove, this much is established that Babita Kumari was raped and murdered in her house. We would now examine whether there are sufficient circumstances to establish that it is the accused persons, who have murdered the deceased. The prosecution in this point has examined three witnesses. The informant Ramdeo Metha P.W.9, his wife Raj Kumari Devi P.W.6 and Hari Shankar Mehta, the uncle of the deceased, who was examined as P.W.5. The informant in his evidence before the Court supported the prosecution case as narrated in the F.I.R. P.W. 6 Raj Kumari Devi, the wife of the informant Ramdeo Mehta, too supported the prosecution case. She stated that at the Bandh they met the four F.I.R. named accused persons, who were coming from opposite side and going towards village. In the evening when her husband returned home at 6.00 P.M., he found her daughter



lying dead on the ground after being raped. The defence has not been able to elicit any contradiction worth the name to disapprove them. P.W.5 Hari Shankar Mehta, the brother of the informant, stated that on the relevant date at about 4.30-500 P.M., he had come to see his field in village Panchparaiya Adhar. Around that time, he saw all the four accused persons coming out from the house of the informant. Later on, he learnt that her niece Babita Kumari has been raped and murdered. He also learnt about the rest of the incident from P.W.9, the informant, about his prior meeting with the four accused persons.

21. The evidence of P.W. 5 fills the gap and completes the chain as to who committed the rape and murder of the deceased. The time lag between witnessing the accused coming out from the house by P.W.5 and the discovery of the girl being raped and murdered by her father at 6.00 P.M., was little enough to rule out that any other person entered the house and committed rape and murder. Furthermore, no one else had seen any one else coming out from the house of the informant between 2.00 P.M. to 6.00 P.M. by which time, informant had returned.

22. It would also appear from the evidence of the Investigating officer that the house of the informant was isolated and the first house was situated about 500 yards away from the said house, which must have emboldened the appellants to commit heinous crime,

as they would go unnoticed.

23. We find that the presence of P.W. 5 in the village Panchparaiya Adhar is very natural, as he has lived in the said village. He is full brother of the informant. Being resident of neighbouring village, he recognized all the accused persons. In fact, the issue of their identification by P.W. 5 has not been disputed. Besides, this, the defence again has not been able to elicit anything significant to discard the evidence of this witness. The evidence of P.W.5 coupled with the evidence of the informant P.W.9 and his wife Raj Kumari Devi (P.W.6), points finger of guilt at the F.I.R. named accused persons, who are appellants in Cr. Appeal (DB) No. 446 of 2007 and Cr. Appeal (DB) No. 416 of 2007.

24. Counsel for the defence vehemently argued that the occurrence took place between 2.00 P.M. to 6.00 P.M. and the informant returned by 6.00 P.M. However, he lodged F.I.R. at 11.45 A.M. on the next day though the police station was at a distance of 5 K.Ms.

25. It is not in dispute that Babita Kumari was the only issue of the informant. The informant must have been mentally shattered to find her murdered and raped. In such circumstances, it would not be unnatural, if there could be some delay in lodging the F.I.R. Furthermore, the defence has not put any question to the informant



with regard to the delay in lodging of the F.I.R. The informant was thus deprived of the opportunity to explain the delay. In such circumstances, the prosecution case cannot be brushed aside on the ground that the F.I.R. was lodged after 20 hours of the occurrence. Seen thus the evidence adduced on behalf of the prosecution unmistakably established the guilt of the appellants of Cr. Appeal (D.B.) No. 446 of 2007 and 416 of 2007.

26. However, we do not find any legal and sufficient evidence against the appellants of Cr. Appeal (D.B.) No. 372 of 2007, namely, Manoj Kumar Mehta and Bijay Mehta, to fasten guilt either under Section 302/34, 376/34 and 120B of the Indian Penal Code. The only evidence against them is the confessional statement of co-accused, which is inadmissible in evidence. It is unfortunate that the trial court convicted them on such paltry evidence, which showed lack of sensitivity on the part of the trial Judge. We acquit the accused-appellants, namely, Manoj Kumar Mehta and Bijay Mehta, of the charges. These two appellants are on bail, they are discharged from the liabilities of their bail bonds.

27. In the backdrop of the discussions made and in view of the factual aspects recorded in the preceding paragraphs, we are of the considered view that the prosecution has produced sufficient circumstance to fasten the guilt under Section 302/34, 376/34 and

120B of the Indian Penal Code against Md. Nizam, Md. Israuddin, Md. Gafur.

28. In course of argument, on the basis of information, it has been submitted by learned counsel appearing in Cr. Appeal (DB) No. 446 of 2007 that appellant Md. Nizam @ Niyam @ Nizamuddin has died during the pendency of the appeal. It goes without saying that the appeal on behalf of the said appellant, in that event shall be treated to have abated.

29. In the result, Cr. Appeal (DB) No. 446 of 2007 and Cr. Appeal (DB) No. 416 of 2007 are dismissed to the extent mentioned above and Cr. Appeal (DB) No. 372 of 2007 is allowed.

30. The bail bonds of appellants Md. Israuddin of Cr. Appeal (DB) No. 446 of 2007 and Md. Gafur of Cr. Appeal (DB) No. 416 of 2007, are cancelled and they are directed to surrender forthwith in the trial court to serve out the rest part of their sentence.

31. Send back the lower court records along with a copy of the judgment to the lower court.

(Samarendra Pratap Singh, J.)

(Kishore Kumar Mandal, J.)

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