

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.454 of 2012**

Arising Out of Roh PS.Case No. -50 Year- 2008 Thana – Roh, District- NAWADA

Vipni Devi @ Vipin Devi, W/o Kedar Chauhan, Resident of Village- Musepur,  
P.S.- Roh, District- Nawada.

.... .... Appellant

Versus

The State of Bihar

.... .... Respondent

---With---

**Criminal Appeal (DB) No. 712 of 2012**

Arising Out of PS.Case No. -50 Year- 2008 Thana -Roh District- NAWADA

Raghu Nandan Chauhan, S/o Late Kedar Chauhan, Resident of Village- Musepur,  
P.S.- Roh, District- Nawada.

.... .... Appellant

Versus

The State of Bihar

.... .... Respondent

**Appearance :**

For the Appellant/s : Mr. Sheo Kumar Prasad. (In both cases)  
For the Informant : Mr. Dr. Anjani Pd. Singh (In both cases)  
For the State : Mr. Abhimanyu Sharma.  
For the State  
(In Cr. Appeal No. 712/2012) : Mr. Satya Nr. Prasad, A.P.P.

**CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH**

**and**

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA**

**ORAL JUDGMENT**

**(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)**

**Date: 06-10-2015**

1. The Appellants have been convicted by Judgment  
and order dated 27.02.2012 and 02.03.2012 respectively passed by  
the Additional District and Sessions Judge-cum-Fast Track Court-  
IVth, Nawada in Sessions Trial No. 196 of 2009/62 of 2010 arising  
out of Roh P.S. Case No. 50 of 2008 for the offence under Sections

302, 201 and sentenced to rigorous imprisonment for life and three years rigorous imprisonment with fine of Rs. 1000/-, failing which further 15 days' rigorous imprisonment respectively.

2. The case of the prosecution, according to the informant Lali Chauhan, P.W. 13, is that he and his wife were blind and on 22.09.2008 at about 7.00 am. when they discovered the dead body of the minor daughter, who had been missing since night of 19/20.09.2008, he instituted the present First Information Report. He further stated that on the night of occurrence when his daughter disappeared, he along with villagers started a search but to no avail. On the said night, the Appellant Raghu Nandan Chauhan had come to his door and had abused him. He used to always ask him for money. When he along with his wife and daughter were sleeping on the Varamdah, his daughter had gone missing. On the morning of 20.09.2008, they had gone to the house of Raghu Nandan Chauhan and requested him to open the door but the accused did not do so at which they became suspicious. In the evening, the villagers had convened a meeting and all of them had decided to look together for the child. He suspected that his daughter aged about 6 years had been lifted by the Appellant Raghu Nandan Chauhan and taken to his house and thereafter, he along with his mother had gouged her eyes and slit her throat and

then thrown her dead body nearby. He further stated that Appellant Raghu Nandan Chauhan, was an anti social element and recently come out of jail.

3. During trial, the prosecution examined 17 witnesses. P.W. 1 Rajendra Chauhan, stated that on 22.09.2008 at about 7.30 am. he along with Sadhu Saran discovered the dead body in the “paen”, then they informed the Police Station at which police personnel came and prepared the inquest report upon which he and Sadhu Saran signed.

4. P.W.2 Arjun Mahto stated that on the night of occurrence at about 8.00 pm., the Appellant Raghu Nandan Chauhan had lifted the daughter of Lali Chauhan, Savitri Kumari aged about 6 years and run away with her. The villagers had gone to the house of Raghu Nandan Chauhan but his mother Appellant Bipini Devi closed the door so they had returned. On the next day, the dead body was discovered, at which the police was informed. He stated that the deceased had been killed by Appellant Raghu Nandan Chauhan and that there was previous enmity between the parties. In his cross-examination, he stated that he had not seen any one assaulting and the case has been instituted on suspicion.

5. P.W.3 Bhim Prasad stated that on hearing that Savitri Kumari had gone missing, all the villagers had searched but



they could not find her. They suspected that the Appellant Raghu Nandan Chauhan had lifted her. On that date, the girl was not found. When they went to the house of the Appellant Raghu Nandan Chauhan, but his mother Vipin Devi did not open the door. The next morning, dead body had been recovered. He also stated in cross-examination that he had not seen anyone assaulting the girl nor had seen anyone throwing the dead body and he disclosed the names on suspicion.

6. P.W.4 Naresh Chauhan stated that after the daughter of Lali Chauhan went missing, a meeting of villagers was convened. Thereafter, they had gone to the house of the Appellants but Appellant Bipini Devi did not open the door so they returned and went to sleep. The next morning, they found the dead body. He stated that Appellant Raghu Nandan had committed a similar act earlier also and had been released from Jail and had threatened the informant and his wife for money. He also stated that he had not seen the occurrence himself and on 'hulla', he had gone to the house of the Appellants but they had run away.

7. P.W.5 Laxman Chauhan stated that the daughter of Lali Chauhan had been lifted by the Appellants and taken to his house. A Panchayati was held in the village, after which they had gone to the house of Raghu Nandan Chauhan but they had seen the

door locked. The next morning they found dead body. He stated that the two Appellants had committed this act because they were demanding money from the informant. He also stated that he had not seen any assault and it was on account of the previous records that Raghu Nandan Chauhan, had been suspected.

8. P.W. 6 Harendra Chauhan stated that Raghu Nandan Chauhan had gone to the door of the informant and had abused him and at night both the Appellants had taken away his daughter. When they looked for her, they found the dead body near the “paen”. He also stated that the act had been committed by the two Appellants. However, in the cross-examination, he stated that he had not seen the assault and the names had been disclosed due to meeting held in the village.

9. P.W.7 Sadhu Sharan Chauhan is a formal witness, who proved the inquest report as Exhibit- 1/1.

10. P.W.8 Vijay @ Vinay Chauhan stated that in the morning of 22.09.2008, he saw the two Appellants carrying a sack and a day later it was learnt that the dead body of Savitri Devi was found near “paen”. There was rumor in the village that two Appellants were involved in the murder. In the cross-examination, he stated that he had not seen the occurrence himself and it was disclosed the names on the basis of meeting held in village.



11. P.W.9 Ram Khelawan Chauhan stated that on the night of occurrence, the Appellants had kidnapped the deceased and the next morning Vinay stated that the two Appellants were seen taking a sack on the head at which he had gone there and on seeing him, the two Appellants had started to run. He further stated that occurrence has been committed by the two Appellants. In course of cross-examination, he also stated that he had not seen the Appellants throwing the dead body. He further stated that after the occurrence, a meeting had been held in the village and since the Appellant Raghu Nandan Chauhan was not present in the meeting so it was suspected that they were involved. He clarified that Vinay Kumar had seen the Appellants taking away the dead body. As stated earlier, Vinay Kumar did not disclose that he had stated this fact to P.W. 10 and, in fact, he stated that their names have been disclosed because of the general rumor in the meeting and hence, this part of the evidence is inadmissible.

12. P.W. 10, Prakash Chauhan stated that on 05.09.2008, during the course of investigation, underwear and a frock had been recovered from the house of the Appellants. The Seizure List was prepared marked as Exhibit-1. He in his cross-examination stated that the Investigating Officer had stated on checking that the frock and underwear had been recovered.



13. P.W.11, Satendra Chauhan stated that on the night of occurrence, the informant told him that his daughter had been kidnapped by Raghu Nandan Chauhan at which *hulla* was raised then they went to the house of Raghu Nandan Chauhan but it was found locked. However, Appellant Bipini Devi was present but she did not open the lock. On the next day, a meeting was held and the day after the dead body was found in a sack, which was covered with a cloth. He stated that the antecedent of the appellant was not good and recently, the Appellant Raghu Nandan had been released from Jail. In cross-examination, he stated that he had not seen the occurrence himself.

14. P.W. 12, Chhote Lal Chauhan stated that the Appellant Raghu Nandan Chauhan had lifted the deceased while she was sleeping with her parents, at which they had gone to the house of Raghu Nandan Chauhan but they had seen the Appellant Bipini Devi out side. The villagers convened the meeting and they decided to go to the house of Raghu Nandan Chauhan, but the same was found locked and the next day, dead body was found covered with a sack. He stated that he had not stated about the deceased having been lifted by the Appellants in his earlier statement recorded under section 161 Cr. P.C.

15. P.W.13, Lali Chauhan, is the informant. He stated

that on the night of occurrence, he and his wife were sleeping, the Appellant Raghu Nandan has lifted his daughter because he used to demand Rangdari. He identified the Appellant by his voice so he raised *hulla* at which they came and started to look for the daughter but they did not find her. Two days later, the dead body was recovered in a sack at which the present case was instituted. In cross-examination, he stated that he could not see anything himself and he had given the statement on the basis of whatever was told to him by the co-villagers.

16. P.W. 14, Daulati Devi, is the mother of the deceased, who stated that on the night of occurrence, the Appellant Raghu Nandan Chauhan had taken away his daughter. She had identified the Appellant by his voice. The dead body was recovered from the "paen".

17. P.W.15, Dr. Brij Bihari Singh, who was an observer in postmortem, on 22.09.2008 stated that it was found that the dead body was decomposed and there was no sign of rape.

18. P.W. 16, Ram Bhajan Yadav, is the Investigating Officer, who stated about the institution of the First Information Report and that he searched the house of the Appellants and found a frock and underwear from there, which is marked Exhibit-7. He proved the formal documents, such as Fardbeyan, the First

Information Report and is more or less a formal witness.

19. P.W. 17 is Chaukidar Jang Bahadur Singh, he proved the material exhibits as frock and underwear.

20. On going through the evidence of the prosecution witnesses, it appears that there is no eye witness to the actual occurrence and the case depends on circumstantial evidence. No doubt, the prosecution has tried to improve its case in Court by alleging directly that the Appellant Raghu Nandan Chauhan had lifted the daughter of the informant on the night of 19.02.2008 and he had been identified by the informant and his wife, but when no information was given in this regard in the first information report, it makes this version untrustworthy. Also we find some witnesses have stated that the Appellants had been seen carrying a sack in the morning before the dead body was discovered, but even this statement is absent in the first information report, which was instituted only after recovery of the dead body. Since these circumstances did not find mention in the First Information Report, we are not inclined to rely upon the subsequent improvement made in the Court. So far the recovery of the frock and underwear from the house of the Appellants is concerned, since there is no cogent proof that the same belonged to the victim, this circumstance is also fit to be rejected.

21. In view of the complete paucity of any direct or reliable circumstantial evidence against the appellants, we are inclined to give benefit of doubt to the Appellants. In the result, both the above Appeals are allowed. The judgment of conviction dated 27.02.2012 and order of sentence dated 02.03.2012, passed by the Additional District and Sessions Judge-cum-Fast Track Court-IVth, Nawada, are set aside. The Appellants, who are in jail custody, are directed to be released forthwith, if not wanted in any other case.

**(Anjana Prakash, J.)**

**(Rajendra Kumar Mishra, J.)**

Shailendra/-

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