

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.663 of 2012

Arising Out of PS.Case No. -21 Year- 2005 Thana – Jainagar, District- Madhubani

Against the judgment dated 18th May, 2012 passed by learned Additional Sessions Judge, FTC II, Madhubani in Sessions Trial No. 261 of 2006

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Panchulal Mikhiya @ Panchu Mukhiya @ Panch Lal Mukhiya S/O Jagdeo Mukhiya R/O Vill- Dorbar, P.S- Jai Nagar, Distt- Madhubani.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance:

For the Appellant : Mr. Bimal Kumar, Advocate
Mr, Birendra Kumar, Advocate
Mr. Upadhyay Saurabh Kumar, Advocate
For the Respondent : Dr. Mayanand Jha, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 26-03-2015

The sole accused in Sessions Trial No. 261 of 2006 on the file of learned Additional District & Sessions Judge, Fast Track Court-II, Madhubani is the appellant. The trial Court convicted him for the offences punishable under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

The case against the appellant was that on 27.01.2005 PW-3 stated that he went to his neighbouring village Patharwa and his nephew, PW-7 came and informed him that his daughter by name, Partima and his niece Ambika were killed by the appellant with a spade. Soon thereafter he said to have come to the village and noticed the dead bodies of the two girls in the



sugar cane field, in the village and large number of people gathered there. The appellant is said to have apprehended by the villagers. In the fardbeyan i.e. recorded statement, PW-3 stated that on the previous day, when the appellant, a native of neighboring village Dorbar attempted to pluck sugarcane from his field, and when his daughter objected to it, the person chased her away, and on the next day, that very person killed both the girls out of vindictiveness.

The police started investigation and recorded the statements of various persons. The dead bodies were sent for post mortem and inquest was also conducted. Ultimately charge sheet was filed alleging that the appellant killed both the girls.

Before the trial Court, the prosecution examined PWs. 1 to 7. The Documentary evidence, comprised of the Inquest Report and post mortem report of the two deceased girls. After examining the appellant under Section 313 of the Criminal Procedure Code the trial Court convicted the appellant.

Sri Bimal Kumar, learned counsel for the appellant states that the facts presented by the prosecution indicated a gruesome picture, but on a close analysis, it becomes clear that the appellant was falsely implicated. He submits that there are several inconsistencies as regards place of occurrence, time of occurrence or as to the motive of the appellant to kill the two minor girls. He submits that while PW-6 stated that the incident took place at 6.00 a.m., PW-7 stated the time as 7.00 a.m.



whereas other witnesses mentioned the time as 9.00 a.m. He contends that though PW-6 stated that himself, PW-4 and others apprehended the appellant, no such statement was made by PW-4. Learned counsel for the appellant further submits that almost all the persons named by PW-6 as constituting the group to apprehend the appellant, did not support the prosecution and were accordingly declared hostile by the Court.

Learned Counsel further submits that there is no reliable evidence to establish the link between the incident and the appellant. It is argued that the prosecution did not produce before the Court, either the so called blood stained shirt of the appellant or the spade, which is said to have been used to which kill the two girls, though it was alleged that they were recovered from the appellant. He further submits that failure of the prosecution to examine the Investigating Officer is fatal to the entire case.

As regards motive, learned counsel submits that the appellant is a stranger to the village, not to speak of the family of PW-3 and, a trivial incident, suggested by the prosecution, to provide link i.e. objection for plucking of sugar cane and the admonition, hardly becomes acceptable. He further submits that though in the evidence it was mentioned that the appellant is a lunatic, the trial Court did not take any steps under Section 228 or 229 of the Criminal Procedure Code. Other grounds are also urged.



Dr. Mayanand Jha, learned Additional Public Prosecutor on the other hand submits that the prosecution was able to prove the case beyond any pale of doubt and whether one goes by the failure on the part of the appellant to put any questions to the contrary, in the cross examination of the prosecution witnesses or to explain several incriminating factors, the charge against the appellant stands proved. He submits that minor discrepancies as to the timing of the occurrence are on account of typical conditions in which the respective witnesses came to know about the incident and it does not in any way, weaken the prosecution's case. He further submits that the version of important witnesses such as PW-3, 4, 6 and 7 that the appellant declared that he sucked the blood of the deceased girls is suggestive of his cruel nature and no interference is warranted with the conviction and sentence awarded by the trial Court.

The machinery of law was set at motion, on account of the death of the two minor girls. The complaint in that behalf was given by P.W.3 the father of one of the deceased, and the uncle of the other. He was not an eye witness and he received information about the incident from PW-7. Therefore, the evidence of PW-7 becomes important in this behalf.

He stated that he saw the appellant and heard him saying that he has committed the murder of the two girls and not only suck their blood, but also ate their meat. He is said to have seen blood stains on the shirt of the appellant and on the

spade. According to him the appellant was caught hold by the villagers. He did not mention that he took part in the process.

Another witness on whose evidence the prosecution relies is PW-6. He stated that the incident has taken place at about 6.00 a.m. and he saw the appellant going with a spade which contained stains of blood and there were blood stains on the shirt of the appellant. Even according to him the accused is said to have informed him that he killed the two girls and sucked their blood and ate the meat. Though the witness stated himself and Parmendra Yadav, PW-5 Dilip Yadav, PW-2 Lallan Yadav, PW-1 Suresh Paswan, PW-7 Jitendra Yadav, PW-3 Devendra Yadav and PW-8 Shyam Langerwar, apprehended the appellant, none of them, except PW-7 and PW-1 supported the case of the prosecution. The timing of the incident as furnished by PW-3 the informant is 9.00 a.m. The entire record is silent and as to how and when the information reached the police and under what circumstances the police arrived the village to record the statement of PW-3.

It is no doubt true that cross examination on the part of the appellant was not effective. All the same there was clear inconsistency between the evidence of the prosecution witnesses that too, who were not declared hostile.

One important circumstance we come across in this case is that though the incident is said to have taken place in the early hours of 27.01.2005 the statement was recorded only at



3.00 p.m. Such a long time that intervened between the incident and the recording of statement remains unexplained. There are cases in which the Hon'ble Supreme Court held that even an hour's delay would be fatal to the case of the prosecution. In the instant case, there is no reason to disbelieve that such a long time of about six hours was used to deliberate and to plan the nature of information that may be furnished to the police, to suit the convenience and interest of the concerned.

It hardly needs any mention that motive plays an important role in criminal cases. If adequate motive is proved, the few missing links in the chain of events can be ignored. Many a time, the motive need not be that strong as to warrant the commission of crime. All the same, motive as such, must exist and it should be one which an ordinary person can treat as a provocation or basis for committing the crime.

Admittedly, the appellant is a stranger not only to the village, but also to the family of the complainant. The only motive attributed to him is that on the previous day i.e. on 26.01.2005, he made an attempt to pluck sugar cane from the field of PW-3 and when one of the deceased, named, Partima objected to it, the appellant chased her away. Even if this is true there does not exist any scope for any person in the place of the appellant to think of committing murder of a girl child as well as another child. We find it difficult to accept the motive suggested by the prosecution, as constituting the basis for

committing the heinous crime of murder of two innocent girls.

Several witnesses stated that the appellant told them that he sucked the blood of children and ate their flesh. Such a serious matter was required to be supplemented further. The post mortem report, of the deceased are silent about any traces of this. Even in the chief examination of the doctor who conducted the post mortem, no suggestions of that nature were made.

We find two more serious lapses in this case. It has already been mentioned that there is no eye-witness or direct evidence in this case, the prosecution has relied upon the circumstantial evidence. The blood stained clothes of the appellant and blood stained spade with which the offence is said to have committed could have been of utmost use, and were required to be preserved and produced before the trial Court, as material objects. Blood stains on those objects could have been analyzed and compared with the blood samples of the deceased children and if they matched, a perfect case could have been made out. For reasons best known to it the prosecution did not produce the blood stained clothes or the spade before the trial Court. We are constrained to observe that the failure in this behalf will lead to an inference provided for, under Section 114 of the Evidence Act. Either those two objects were not there, or if produced would have helped the case of the appellant.

The second serious infirmity is that the Investigating



Officer was not examined as a witness. The Investigating Officer has an important role to play in criminal cases. It is he who arranges the various events that are noticed in course of investigation, to provide a complete chain, to link the accused with the occurrence. It was just understandable as to how and why the Investigating Officer did not depose as a witness. It is not necessary that the same person who conducted the investigation must depose as a witness. The concerned Station House Officer could have deposed to present the case of the prosecution with the help of the record. Such a serious lapse has certainly weakened the case of the prosecution.

We have also noticed that more than one witness of the prosecution have stated that the villagers were virtually chasing the appellant calling him as mad or insane person. The trial Court was under obligation to examine the physical condition of the appellant as required under Section 328 and 329 of the Criminal Procedure Code. No effort was made in that behalf and the trial Court ignored the observations of various witnesses about the mental condition of the appellant.

Cumulative effect of our discussion is that the prosecution has miserably failed to prove its case that the appellant committed murder of the two girls. At any rate, the appellant has served sentence of ten years of imprisonment.

We therefore, allow this appeal and acquit the appellant and set aside the conviction and sentence ordered against him.

Before parting with the case, we intend to make an observation about the gross negligence being exhibited by the officers of the Police Department in several important criminal cases. In quite large number of cases, the Investigating Officers are not examined as a witness and the same constitutes one of the reasons for acquitting the accused.

We hereby direct that the Director General of Police, Bihar shall issue instructions to all the Superintendent of Police as well as the police stations to ensure that the Investigating Officer shall examine as a witness in all the cases, particularly those tried by Sessions Courts and to further direct that any failure in this behalf shall be treated as a misconduct on the part of the Station House Officer, who held the office when the trial of the case was going on.

(L. Narasimha Reddy,CJ)

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Chandran/Md.Ibrarul

(Vikash Jain, J)

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