

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.490 of 2015

[Against the judgment of conviction dated 02.04.2015 and order of sentence dated 08.04.2015 passed by the 2nd Additional Sessions Judge, Supaul, in Sessions Trial No.87 of 2009 arising out of Tribeniganj P.S. Case No.217 of 2008]

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Suresh Mehta, S/o Late Rameshwar Mehta, resident of village- Mirjawa, P.S.- Tribeniganj, District- Supaul

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Upendra Kumar Chaubey, Advocate

For the Respondent/s : Mr. A. K. Sinha, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 21-06-2016

By the judgment of conviction dated 02.04.2015 and order of sentence dated 08.04.2015 passed by the 2nd Additional Sessions Judge, Supaul, in Sessions Trial No.87 of 2009 arising out of Tribeniganj P.S. Case No.217 of 2008, the sole Appellant has been convicted under Section(s) 302, 366-A and 201 Indian Penal Code and sentenced to undergo rigorous imprisonment for life under Section 302 Indian Penal Code with fine of ₹10,000/-, rigorous imprisonment for ten years under Section 366-A Indian Penal Code with fine of ₹5,000/-, rigorous imprisonment for seven

years under Section 201 Indian Penal Code with fine ₹5,000/-. In case of non-payment of fine, further imprisonment for six months. All the sentences were ordered to run concurrently.

2. The case of the prosecution according to Ram Sunder Mahto is that on 17.10.2008 at about 8.00 PM his daughter Pinki Kumari, aged about 16 years, was talking to the present Appellant along with 2-3 persons. He told his daughter to go home and proceeded to relieve himself in the fields. When he returned, he found out that the Appellant had taken away his daughter and she could not be found. When the entire village came to know of it and she was not found, on the next day at about 6.00 AM he confronted the Appellant as to why he had committed such an act. A *Panchayati* was also convened in which it was disclosed that the girl would be found at Triveniganj Bus Stand. So, they proceeded on the motor cycle but she was not there. When the Appellant was informed that the girl was not found, he told him to do whatever he wanted and hence, the present written report was filed.

A couple of days later the dead body was recovered from the river and it was opined that she had been throttled to death.

3. It appears that the case is based on circumstantial evidence and there is no direct evidence either of kidnapping or of

murder. It is also worth noting that some of the witnesses have given another version about disappearance of the daughter of the Informant.

4. The prosecution has examined twelve witnesses in support of his case, whereas, the defence has examined two witnesses.

5. PW 1 (Siv Charan Mehta) has been declared hostile, whereas, PW 2 (Bhuneshwar Mehta) stated that he learnt that the daughter of Ram Sunder Mehta was missing and he also learnt that the Informant himself had committed her murder.

6. PW 3 (Bhupendra Sah) was a tendered witnesses, but in cross-examination he stated that the daughter of the Informant had run away.

7. PW 4 (Balram Yadav) is a hearsay witness on the point that the Informant disclosed that his daughter was missing and later learnt that the dead body was recovered from the river.

8. PW 5 (Ram Sunder Mehta), the Informant, stated that on 17.10.2008 at about 8.00 PM, the appellant Suresh Mehta and 2-3 boys were talking to his daughter. So, he scolded his daughter and told her to go home and proceeded towards fields to relieve himself. When he returned, he looked for his daughter but she could not be found and he confronted the Appellant but he just



kept quiet. A *Panchayati* was convened in which the Appellant agreed to return the daughter and said that she was at Triveniganj Bus Stand. So, he along with four persons most of whom were not examined and Binod Mehta (PW 9), who is a relative, proceeded to the Bus Stand but could not find the girl. He proved the written report as Ext.1. He further stated that five days later the dead body was recovered from the river. Also that his daughter was talking to unknown persons on the night of occurrence and that they were chased by Jitendra Mehta, Bhola Bharti, Mithilesh Kumar and Brahamdeo.

9. PW 6 (Dr. Nirmal Kumar Chaudhary) conducted Post Mortem Examination and proved the Post Mortem Examination Report as Ext.2 and found following injuries on the person of the deceased:

“External injury: Tongue protruded
Dissection: Brain matter congested, Trachea rings fractured and blood clots present in trachea. Blood and blood clots were present subcutaneous tissues. Both lungs congested. Both chambers of heart full. All solid viscera of abdomen congested. Stomach contained 50 ML of fluid. Bladder-empty. Uterus- Non gravid. Time elapsed since- 3 to 5 days. Cause of death- Due to asphyxia as a result of the above mentioned injuries caused by strangulation.”

10. PW 7 (Dr. Arun Kumar Verma) was a member

of the Board of Doctors along with PW 8 (Dr. Shanti Bhushan) and corroborated the fact of conducting Post Mortem Examination.

11. PW 9 (Vinod Mehta) is the brother-in-law of the Informant, who stated that on the date of occurrence at about 8.00 PM the Appellant was talking to the girl and later he learnt that the girl had disappeared. In *Panchayati*, the Appellant was asked as to where the girl had gone and he disclosed that she was at Triveniganj Bus Stand but she was not found. He also corroborated the recovery of the dead body from river side. He disclosed his relationship with the Informant and that the Informant had been excommunicated by the villagers in which decision the Appellant and his father had taken active part.

12. PW 10 (Bhupendra Mehta) is the nephew of the Informant, who stated that he heard from the brother of Pinki Kumari i.e. Mithilesh Kumar that his sister had gone missing. He talks about the *Panchayati* and the Appellant having disclosed that the girl would be found at Triveniganj Bus Stand but she was not found. He also stated about the recovery of the dead body where 100 persons had gathered.

In cross-examination, he stated that he was unable to name any of the *Panches*.

13. PW 11 (Mithilesh Kumar Mehta) is the son of



the Informant and brother of the deceased. He stated that on 17.10.2008 at about 8.00 PM his father called out to him, so, he went after ten minutes. His father told him that the Appellant and his sister Pinki both had disappeared. He along with Bhola Bharti, his cousin brother, went around looking for her but she could not be found. Then *Mukhiya* came but the Appellant refused to disclose anything to *Mukhiya*, who also disclosed that he had seen the girl and the Appellant along with 2-3 unknown persons going towards the river. It was then decided that the Appellant be handed over to the police at which police was informed and he was taken away.

In cross-examination, he stated that the *Panches* had exerted force upon the Appellant to disclose about the occurrence and it is only then he had done so. Surprisingly, he stated in cross-examination that the Appellant was a close door neighbour and his sister was on visiting terms with him and there was absolutely no complaint from before.

14. PW 12 (Md. Mahtab Alam) is a formal witness.

15. On going through the evidence, as mentioned above, we find that apart from the fact that the Appellant had been seen talking to the girl on the previous day, there is no further material against him. Further, it is the case of the prosecution itself that while the girl went missing the Appellant was at the village

itself. Hence, there is complete lack of any conclusive evidence against the Appellant in regard to kidnapping or murder of the deceased.

16. In such circumstances, we acquit the Appellant of the charges leveled against him by giving him benefit of doubt. The impugned judgment of conviction and order of sentence passed by the court below is hereby set aside.

17. The Appellant, Suresh Mehta, who is in custody, is directed to be released forthwith, if not required in any other case.

18. In the result, the Appeal is allowed.

(Anjana Prakash, J)

J.Alam/-

(Rajendra Kumar Mishra, J)

AFR/NAFR	
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