

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.606 of 2014

Arising Out of PS.Case No. -99 Year- 2006 Thana -BOCHHA District- MUZAFFARPUR

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1. Radheshyam Choudhary Son of Late Jageshwar Choudhary, R/o Village - Maidapur, P.S. - Bochachan, Distt. - Muzaffarpur.
 2. Vinod Choudhar Son of Late Jageshwr Choudhary R/o Village - Maidapur, P.S. - Bochachan, Distt. - Muzaffarpur.
 3. Vishwnath Choudhary Son of Late Mahesh Lal Choudhary R/o Village - Mohamadpur, Lalse, P.S. - Sakra, Distt. - Muzaffarpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rana Pratap Singh, Sr. Advocate Mr. Aaruni Singh
For the State	:	Mr. S.C. Mishra, A.P.P.
For the Informant	:	Mr. Kumar Ravish Mr. Asif Daula Siddiqui.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 30-01-2016

Heard learned counsel for the Appellants, learned
counsel for the Informant and learned counsel for the Additional
Public Prosecutor.

The above three Appellants have been convicted by
the learned 3rd Additional District and Sessions Judge, Muzaffarpur
in Sessions Trial No. 30/2008 of 167/2009 by the judgment and
order of conviction and sentence dated 21/23.05.2014 under
sections 302, 201 and 120B of the I.P.C. and sentenced to go
rigorous imprisonment for life for the offence punishable under



section 302 of the I.P.C. and a fine of Rs.2,00,000/-. Further, these appellants have been sentenced to undergo rigorous imprisonment for two years respectively for the offence under sections 201 and 120(B) of the I.P.C. as also a fine of Rs. 1000/- each, in default of which, further rigorous imprisonment of one year for the said offences.

The case of the prosecution, according to Dilip Kumar Choudhary (P.W.7), father of the deceased, is that on 08.08.2006 his child, Rishabh Raj, the deceased, was playing outside. When his wife went to look for him at 10.00 O'clock, he was not to be found. The informant then came home and started to look for the child and also informed the Police. In the meanwhile, he was told that when his wife was standing at the door, the deceased, Rishabh Raj, was playing, the Appellants and some other accused persons were watching the child suspiciously and at that time, Krishna Kumar Choudhary started talking with the elder brother-in-law of Vishwanath Choudhary. He then asked Krishna Kumar Choudhary and Appellant Vihshwanath Choudhary, who were standing at the door, about missing whereabouts of his child but they feigned ignorance. Then he saw Appellants, Radheshyam Choudhary, Vinod Choudhary and accused Chandan Kumar Choudhary leaving the place after locking the house with 3-4 locks. Despite a lot of



efforts when the child could not be found, he gave information at about 4.00 pm. to the local Police Station, which then arrived and searched the house of Krishna Kumar Choudhary from inside of which on the ledge inside the room wrapped in thick cotton sheet the dead body of the child was found. On this *fardbeyan*, the investigation started and the charge-sheet was submitted and thereafter, Appellants Radheshyam Choudhary, Vinod Choudhary and Vishwanath Choudhary were sentenced to death whereas Vinod Choudhary was sentenced to life by a Judgment dated 06.02.2014. They then filed an Appeal before the Court, which was admitted but at the stage of final hearing, this Court remanded the matter to the Trial Court for exhibiting *Sanha Diary Entry*. P.W.8, Ram Parikshan Gupta, I.O. of the case, was then examined as P.W.12 and he proved *Sanha Diary Entry* as Exhibit-16. It appears accused Chandan Choudhary then absconded. Hence, the appeal only on behalf of three Appellants.

In the present case, during trial, the Prosecution examined 11 witnesses. P.W.1, Ram Chandra Choudhary, uncle of the deceased, stated that while his nephew was playing, the present Appellants and some other accused persons were talking to each other and looking at the child. All of them allured the deceased with *Chocolate* inside their house, which was seen by Manish



Kumar (P.W.5), Sushila Devi, his mother (P.W.2). At about 10.00 am. when the mother of the deceased went to look for the child, he was not to be found then they started looking for the child and also asked the accused persons his whereabouts. Information was then given about missing of his child Rishabh. They found the door of the Appellants locked with 5-6 locks, so they became suspicious and informed the Police in regard to it. When the Police came, they also looked for the child. When they also could not find him, they asked the villagers as to whose house was locked at which the villagers disclosed the names of house owners and then the locked back door was broken open by the Police and the dead body was recovered from the ledge. He proves his own signature that of the informant and another witness as Exhibit Nos. 1, 1/1 and 1/2. He stated that the Inquest Report was prepared and the dead body was sent for Postmortem.

P.W.2, Sushila Devi, grand-mother of the deceased, stated that on the date of occurrence, she had seen her grand son playing in front of the house where all the Appellants were standing nearby and pointing out at him. She went inside the court-yard. The mother of Rishabh asked her child because she had to feed him, but he could not be found. She then informed her elder son, who came and looked for child but he could not be found. In the meanwhile

when they asked the Appellants with regard to the whereabouts of the deceased, they hurriedly locked the house and left. The Police came on information and entered the house of the Appellants from the back door and recovered the dead body.

It is worth noting that this witness has not stated anything about the Appellants having lured the child inside their house as was stated by P.W.1, her son, Ram Chandra Choudhary.

P.W.3, Angad Kumar, stated that on the date of occurrence, he had seen the Appellants and other accused leaving hastily and he was later informed that Rishabh was missing. They also gave information on a Public Address System whereafter the Police was informed. The Police allegedly entered the house of the Appellants breaking open the back door and recovered the dead body of which documents were prepared and then the dead body was sent for Postmortem. In his cross-examination, his attention was drawn to the earlier statement that he had not stated that he had seen the Appellants leaving in a hurry.

P.W. 4, Kaushal Kishore Singh, stated that while he was brushing in front of his house, he had seen the Appellants standing nearby and then accused Krishna Kumar picked up Rishabh in his lap and started feeding him something probably a *Chocolate*. After it, he does not know where he went and he



himself went for a bath. Later, he learnt that the child was missing and everyone was looking for him. The Police was informed, who came and saw 2-3 locks on the door of the Appellants and they were absent. The Police then entered the house from the back door and recovered the dead body. Inquest Report was prepared and the *fardbeyan* was recorded. He stated that the child was missing since 10.00 am. whereas the Police came at 5.00 pm. His attention was drawn to the earlier statement that he had not stated that accused Krishna Kumar had picked up Rishabh, when he was playing with other children.

P.W.5, Manish Kumar, is an important witness who stated that on 08.08.2006 while he was ready to go to school at about 10.00 am., he saw his cousin Rishabh Raj playing whereas the Appellants were standing at the door and calling out to him showing him a *Chocolate*. On seeing the *Chocolate*, Rishabh rushed towards the accused and followed them inside the house. He then went to school where he learnt during tiffin time that the child was missing. He came back and started looking for the child. His uncle, Dilip Choudhary and Deshbandhu Agrawal went to Police Station and gave information and Police came at quarter past four and started to make enquiries. At that point of time, all the accused persons were missing and on their door, 3-4 locks had been put. He



then disclosed to the Police with regard to the accused offering the *Chocolate* to the deceased. The house of the Appellants was broken upon from the back and entered. In his presence, the Dead Body was recovered from the ledge of which an Inquest Report was prepared. He and Umesh Kumar Choudhary signed on the same, however, Inquest Report was not before them. He had told his uncle, accused Krishna Kumar had picked up a child and taken him inside the house. He further stated that at about 5.00 pm. the back door of the Appellants was opened in presence of other witnesses, but no one was present inside. He also conceded that Vihshnu Choudhary had instituted a case against him, in which his father and Jai Prakash, Choudhary, Dilip Choudhary and Bachche Babu Choudhary, he and his father were accused. The case was still going on.

P.W.6, Archana Devi, is the mother of the deceased, who stated that at about 10.00 am., when she was inside the house, her child as was usual playing outside. She went to feed him but she found the Appellants standing and pointing towards her son Rishabh. On her call, Rishabh did not come, thereafter, she went inside the house told her mother-in-law to get her child for lunch. However, she was informed that Rishabh was missing so they started looking for her and informed her husband. She had told her



husband that the Appellants were pointing to Rishabh when she had gone outside to call him. She stated that she had seen the Appellants leaving their house in haste. When asked, they replied that they had not seen the child. When the Police came, they saw several locks on the door of the accused so they asked whose house it was and then they entered the same breaking open the door and recovered the dead body wrapped in a cotton blanket. In cross-examination, she stated that long time back, Appellant Vishwanath Choudhary had instituted a case against her husband. In cross-examination, it also appears that there was no dispute thereafter, since the relationship between the parties was normal.

P.W.7, Dilip Kumar Choudhary, is the informant of the case, who stated that on 08.08.2006, he got information that his child had gone missing. He had been told that while his child was playing at the door, Appellants were looking towards him suspiciously, thereafter, he went missing. He reportedly asked the Appellants about his whereabouts but they showed ignorance. He stated that several attempts were made to search the child but he was not to be found. The Police came and made enquiries from nearby neighbours and saw that the house of the Appellants was locked with 4-5 locks. They were informed that till 12.00 O'clock, the accused persons were present in the village but after they had



left having locked the house. He stated that the back door was forced open by the Police and the dead body was recovered from inside in presence of other witnesses. He proves his signature in *fardbeyan* as Exhibit-1 and Inquest Report, which was attested photocopy signed by Manish Kumar and Umesh Choudhary as witness in writing of R.P. Gupta, S.I. as Exhibit-5. He also proves the Dead Body Chalan as Exhibit-6. He stated in his cross-examination that there was distant relationship between himself and Appellant Vishwanath Choudhary and that his house is about 6 km away from the place of occurrence. To a specific query, he had stated that he had not seen blood stains on clothes of the Appellants when they were leaving.

P.W.8, Ram Parikshan Gupta, is the Investigating Officer. He stated that on the date of occurrence, he received a direction that the missing child be searched. In course of the same, he searched the house of the Appellants, which was locked and then they opened from the back door and recovered the dead body wrapped in a cotton blanket and brought it to the door of the informant. He proves the *fardbeyan* as Exhibit-7 and the Inquest Report as Exhibit-5 as also the signature of Umesh Choudhary and Manish Kumar as Exhibit nos. 5/1 and 5/2 on the Inquest Report. After the Dead Body Chalan was prepared, it was sent for



Postmortem. He stated that the place of occurrence was the house of the accused Krishna Kumar Choudhary and Appellants Radheshyam Choudhary, Chandan Choudhary and Vinod Choudhary, which comprised of two rooms, adjoining with houses in nearby proximity. In cross-examination, he stated that there was no eye witness to the actual occurrence and Vishbanath Choudhary, lived about 6-10 km. away from the place of occurrence. He also stated that he did not see the papers of the house and it was on the identification of the witnesses he assumed the house belonged to the Appellants. He also stated that the back door was not locked but the door was just put together. The same witness had been examined as P.W. 12 after the matter was remanded, who proved *Sanha Diary Entry* dated 08.08.2006 as Exhibit-16.

P.W.9, Dr. Mumtaz Ahmad, who performed the Postmortem and found the following injuries on the person of the deceased :

I. One ligature mark 0.75 cm. broad (approximately) was found encircling the neck completely at approximately middle level.

II. One incised wound with clean cut margin was found on front and right lateral side at

neck just above middle level 3" x 1.5" x muscle and trachea deep cutting. The trachea from right lateral side. On dissection- no any injury to muscle and vessels was found on literal side of neck. The deceased died due to shock, hemorrhage and asphyxia, as a result of mainly by injury no.2 caused by some sharp cutting weapon.

P.W.10, Sandeep Kumar Singh, is a formal Police Officer, who had merely submitted the charge-sheet and similarly P.W.11, Arun Kumar Keshri, is a formal Police Officer, who is said to have arrested the accused Chandan Kumar Choudhary and submitted supplementary charge-sheet in respect to him.

On going through the evidence of the witnesses, the circumstances, which transpire against the Appellants, are as follows:

- i) The Appellants were standing outside their house near the place where the deceased Rishabh was playing along with other children.
- ii) They were looking suspiciously at him.
- iii) They allured the child with a

Chocolate inside the house.

- iv) One Krishna Kumar Choudhary had picked him up and taken him inside the house.
- v) The Appellants were seen leaving village hastily after having locked their house.
- vi) The dead body was recovered from inside the house of the Appellants.

Insofar as the circumstance nos. (i) and (ii) are concerned that the Appellants were seen standing near their house and looking suspiciously at the child being a perception of the witnesses cannot be a circumstance which can be used for maintaining the conviction.

The circumstance nos. (iii) and (iv) are not reliable, since had it been so, this fact would have been mentioned in the *Sanha Diary Entry* or in the *fardbeyan* of the informant which was not done. In such circumstances, we are inclined to reject the same.

The circumstance no. (iv) that the Appellants were seen leaving the village hastily is also speculative and after locking their house at best may give rise to suspicion, but not

grave enough to point definitely to the guilt of the Appellants.

As for recovery of the dead body, we find that the Inquest Report, Exhibit-5, was witnessed by P.W.5 and one Umesh Choudhary but Umesh Choudhary had not been examined nor did Manish Kumar, P.W.5, prove his signature on the same. Subsequently, the informant proved his signature. In such circumstances, Inquest Report (Exhibit-5) cannot be held to be completely reliable document.

We find that no doubt most of the witnesses stated that the back door was broken open and the Dead Body was recovered meaning thereby that the Appellant nos. 1 and 2 were in actual possession of the contents placed therein but the Investigating Officer has stated that the door planks were just kept together and not locked. In such circumstances, it is difficult to exclude the possibility of it being under use by some else.

We also find that the circumstance that the Appellants had left the house hastily on the same date after having locked their house or the factum of recovery of the Dead Body from their house has not been put to them under section 313 of the Cr. P.C. and hence, it has to be kept out of consideration.

For the aforesaid reasons, we hold the prosecution version highly untrustworthy and resultantly allow the appeal and

set aside the Judgment of conviction and Order of sentence dated 21/23.05.2014 passed by the 3rd Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 30 of 2008/167 of 2009. The above named 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.)

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