

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 36 of 2012

Arising out of P.S. Case No. -95 Year- 2002 Thana -Sikandra
District- JAMUI

Karu Manjhi S/o Prabhu Manjhi R/o Village-Hariharpur, P.S.-
Sikandra, District- Jamui.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

with

Criminal Appeal (DB) No. 1158 of 2011

Arising out of P.S. Case No. -95 Year- 2002 Thana-Sikandra
District- JAMUI

Dhanu Rabidas S/o Late Girdhari Rabidas Resident of Village-
Madhopur, P.S.- Sikandra, Dist.- Jamui.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

Appearance :

(In CR. APP (DB) No.36 of 2012)

For the Appellant/s : Mr. Mritunajay Kumar, Adv.
: Mr. Umesh Prasad, Adv.

For the Respondent/s : Mr. S.C. Mishra, APP.

(In CR. APP (DB) No.1158 of 2011)

For the Appellant/s : Mr. Prashant Ranjan Singh, Adv.
: Mr. Alok Kumar, Adv.
: Mr. Prabeen Kumar Singh, Adv.

For the Respondent/s : Mr. A. Sharma, APP.

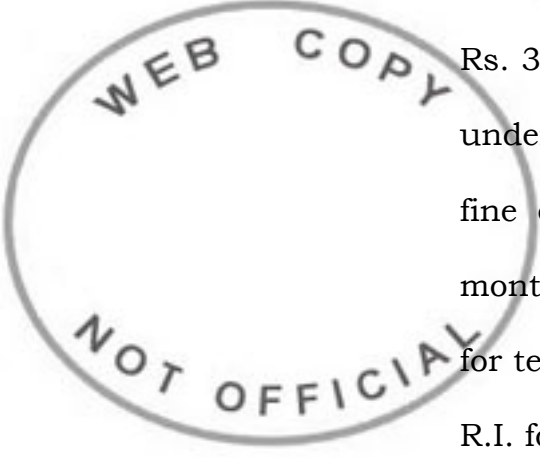
CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 28-06-2016

01. The Appellants have been convicted under
Section 302 IPC and sentenced to R.I. for life and a fine of Rs.



5,000/- in default of which R.I. for six months and under Section 364 IPC sentenced to undergo R.I. for life and a fine of Rs. 3,000/- and in default of which R.I. for three months and under Section 307 IPC sentenced to R.I. for ten years and a fine of Rs. 3,000/- and in default of which R.I. for three months and further under Section 376 IPC sentenced to R.I. for ten years and a fine of Rs. 3,000/- and in default of which R.I. for three months by a judgment of conviction and order of sentence dated 10/15.11.2011 by the Additional Sessions Judge, F.T.C.-V, Jamui in S.Tr. No. 311 of 2008/Tr. No. 40 of 2009 arising out of Sikandra P.S. Case No. 95 of 2002.

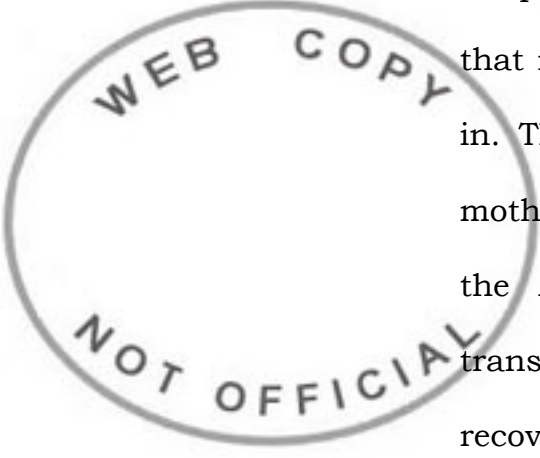
02. The case of the prosecution according to (P.W. 8), Kalbatiya Devi, the Informant at the Primary Health Centre, Sikandra is that at about 10-10.30 P.M. when she along with her two sons P.W. 6, Rajesh Kumar Rabidas and P.W. 7, Ramesh Kumar and minor daughter, Sarita Kumari (deceased) were sleeping in the night of 22/23.08.2002 there was violent knocking at her door. She identified the voice of Kedar Manjhi and Karu Manjhi, the Appellants who were mazdoors of the Appellant, Dhanu Rabidas. She however did not open the door but the accused persons pushed open the door and started to assault her. Then Appellant, Dhanu Rabidas ordered that her daughter be pulled out and then both of them were assaulted brutally and the daughter was taken away. She alleged that the Appellants along with the

other named accused persons had committed rape because of a dispute over a palm tree. Even earlier Appellants had tried to intimidate her and her family and also trespassed in her house.

03. During trial the prosecution examined twelve witnesses. P.W. 1, Sanjay Rabidas, P.W. 2, Ramdhani Rabidas, P.W. 3, Nandlal Rabidas, P.W. 4, Chotelal Rabidas, P.W. 5, Ramdeo Rabidas have not supported the prosecution case and declared hostile. P.W. 10, Krishnandan Prasad, P.W. 11, Pradip Kumar and P.W. 12, Chetnarain Singh were Police Officers and apart from P.W. 12, Chetnarain Singh none of them are material. P.W. 6, Rajesh Kumar Rabidas, the son of the Informant has partly not supported the case of the prosecution whereas P.W. 7, Ramesh Kumar and P.W. 8, Kalbatia Devi have deposed as eye-witness. P.W. 9, Dr. Sayad Nausad Ahmad conducted the post-mortem of the deceased. It would be important to discuss the evidence of the material witnesses first which we proceed to do.

04. P.W. 6, Rajesh Kumar Rabidas has stated that at about 10 P.M. the Appellant, Karu Manjhi, Kedar Manjhi and others came at his house and killed his sister and assaulted his mother. He was declared hostile on the point of identification of the Appellant, Dhanu Rabidas.

05. P.W. 7, Ramesh Kumar is another son of the Informant who stated that on the night of occurrence at about



10.30 P.M. while he along with his brother and sister were sleeping some miscreants knocked the door and threatened that if he did not open the door they would force themselves in. They thereafter forced the door open and assaulted his mother and took away his sister and killed her. He identified the Appellant, Karu Manjhi and Kedar Manjhi in this transaction. The next morning the dead body of his sister was recovered.

In cross-examination, he specifically stated that the Appellant, Dhanu Rabidas was not one of the miscreants. However, he conceded that he was merely 5-6 years of age at the time of occurrence.

06. P.W. 8, Kalbatiya Devi stated that on the night of the occurrence the accused persons including the present Appellants entered into her house and took them outside. They then assaulted both of them and raped her daughter in front of her and took her away and thereafter her dead body was recovered the next morning without clothes. She stated that her husband was now dead and she and her children were sleeping in the same room.

In cross-examination, she stated that the miscreants entered broken into her house. When the Police visited the place of occurrence she could not show the same to it since she was in the hospital but her children had done so.

Her attention was drawn to the earlier statement that she had not stated about her door being broken open and that she had seen her daughter being raped in front of her. She had also not stated about the lantern burning at the place of occurrence. She conceded that there was previous enmity with the Appellant, Dhanu Rabidas on account of palm tree. It was suggested to her the fact that the deceased used to roll beedies and while returning home some miscreants had committed rape and the Appellants had been falsely implicated. She denied the said suggestion.

07. P.W. 9, Dr. Sayad Nausad Ahmad conducted the post-mortem of the deceased (Sarita Kumari) on 24.08.2002 and found the following injuries on her person:-

"Face was congested. Eyes were semi closed. Conjunctiva was oedmatous with petichial hemorrhage in sub-conjunctiva.

- (i) *A large bruise over left shoulder and left upper chest measuring 5"x5".*
- (ii) *Multiple bruise ranging from 3"x3" to 1"x1 ½" over back.*
- (iii) *abrasion over right side of abdomen were present ranging from 2"x2" to 2" to 1 ¼".*
- (iv) *A lacerated wound over posterior wall of vagina extending upto anus measuring 3"x1/4"X2". Last injury is possible after rape caused by*



rape.

On dissection:-

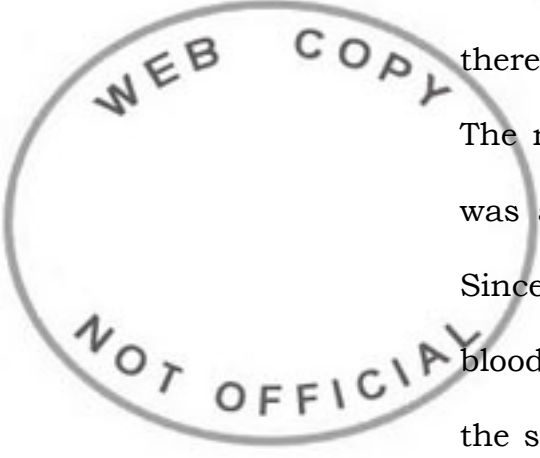
Blood and blood clots was present in the wound. There was fracture 2nd, 3rd and 4th ribs fracture haematoma. Uterous was small and non-gravid. The above injuries were antimortem in nature caused by hard blunt substance.

He proved the post-mortem examination report as (Exhibit-1).

08. P.W. 10, Krishnandan Prasad, the Police Officer merely proved the signature on the formal First Information Report as (Exhibit-4) and on the Inquest Report as (Exhibit-5) and the endorsement on the same as (Exhibit-6) and the seizure-list as (Exhibit-7). He proves the injury report of the Informant issued by Dr. A. M. Prasad, Sikandra as (Exhibits-8 & 8/1).

09. P.W. 11, Pradip Kumar is the next Police Officer who submitted the supplementary charge-sheet on 06.07.2005 which he proves as (Exhibit-9).

10. P.W. 12, Chetnarain Singh was the Investigating Officer posted at Sikandra Police Station on 23.08.2002 and recorded the fardbeyan of the Informant at the hospital which is marked Exhibit-6. He further stated that he proceeded to the place of occurrence and found the naked dead body of which he prepared an inquest report and sent the same for post-mortem. He examined the house of the Informant and

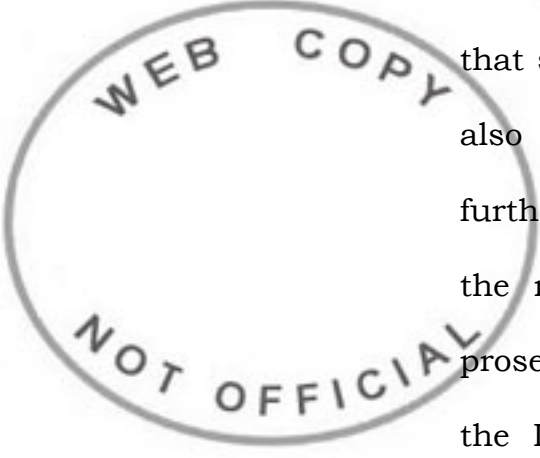


found all the articles scattered and broken bangles lying in the courtyard. Further, he also found the broken door kept there thus confirming the manner and place of occurrence. The next place of occurrence was an abandoned field which was about one kilometer from the village of the Informant. Since it had become late he could find only faint traces of blood. However, he seized a “Shameez” of which he prepared the seizure-list as Exhibit-7 thereafter part charge-sheet was submitted on 21.11.2002 also under Sections 376, 302 and 120B IPC.

In cross-examination, his attention was drawn to the statement of Informant and that she had not stated about her daughter having been raped in front of her nor had given any document with regard to the panchayati which was supposedly held between the Appellant, Dhanu Rabidas and the Informant. He clarified that there was no eye-witness to the second part of the occurrence and the place where the dead body was found, was near from the village.

11. The defence examined only one witness namely Dr. Anil Kumar Sharma on the plea of alibi of acquitted accused Sakaldeo Rabidas.

12. It has been submitted on behalf of the Appellant, Karu Manjhi that the two sons of the Informant have given contradictory statement in regard to the complicity of one of the appellants and, therefore, the sole evidence of the



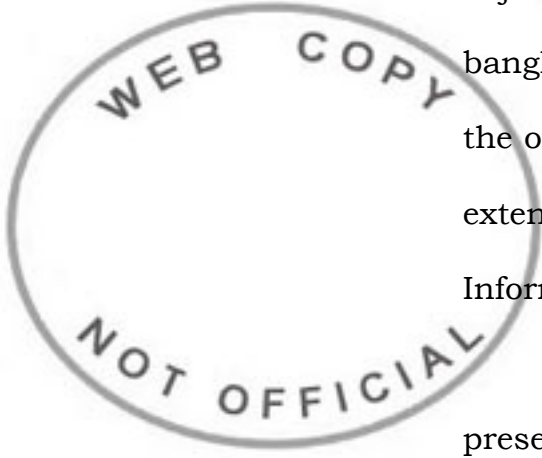
Informant is fit to be disbelieved. The further submission is that she has developed the case from time to time by saying that she was an eye-witness to the rape of her daughter and also implicated several persons who were acquitted which further creates a doubt about her testimony. He submits that the means of identification has not been proved by the prosecution as in the fardbeyan it has been submitted that the Informant had identified the accused in the light of lantern which was not seized by the Police Officer.

13. The Counsel on behalf of the Appellant, Dhanu Rabidas submits that the Appellant was of eighty years of age on the date of his examination in the year 2010 and now he must have attained the advanced age of more than eighty years and, therefore, he should be acquitted of the charges. The further submission is that the two of the sons of the Informant had categorically denied the complicity of the Appellant, Dhanu Rabidas and, therefore, the sole eye-witness in his regard should not be relied upon.

14. On going through the evidence of the witnesses, we find that the consistent story of the Informant is that on the night of the occurrence the miscreants forced themselves inside the house and had assaulted the mother and daughter and taken away her daughter and the very next morning the naked dead body of the girl was recovered from a lonely place which suggested that she was probably raped and murdered.

The Investigating Officer on the manner of occurrence found objective evidence of broken planks of the doors and broken bangles of the Informant. In such circumstances, evidently the objective evidence proves the manner of occurrence to the extent of having taken place in the manner described by the Informant.

15. As for the complicity and the identification of the present Appellants, we find that the Informant had named both the Appellants at the earliest instance. She specifically stated that the Appellant, Karu Manjhi was a labour of Appellant, Dhanu Rabidas and it was at his instance that the present occurrence was got committed and it was he who had ordered lifting up of the girl thereafter she was taken away and found dead the next morning. The Informant had also stated that even earlier the Appellant, Dhanu Rabidas had got some incident committed in her house on account of some active dispute over a palm tree. Since the miscreants were well-known to the Informant there was no scope of mistaken identification especially when they were in her presence for quite a long time. The Police Officer had stated about the injury reports of the Informant and also having collected it from the Doctor. Even if the prosecution has not brought the injury report of Doctor proving the injuries on record on this score alone we are not inclined to discredit the evidence of the Informant. We, further, find that P.W. 6, Rajesh Kumar



Rabidas and P.W. 7, Ramesh Kumar who were young boys at the time of occurrence named Karu Manjhi as one of the miscreants thus substantiating the prosecution case to some extent.

16. In the result, finding no merit in both the appeals, the same is dismissed.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	X
Uploading Date	11.07.2016
Transmission Date	11.07.2016