

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.249 of 2011

Arising Out of PS.Case No. 9 Year- 2006 Thana -null District- VAISHALI(HAJIPUR)

1. Kunwar Mandal @ Ram Kumar Mandal S/O Saini Mandal, R/O Village -
Ajitpur, P.S. Patepur, District - Vaishali

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Amit Kumar Rakesh, Advocate

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: 14-01-2016

The sole Appellant has been convicted under Section 302 I.P.C. and sentenced to R.I. for life and fine of Rs.20,000/-, in default of which simple imprisonment for two months, by judgment dated 14/22.2.2011 passed by the Additional Sessions Judge, Fast Track Court No.IV, Vaishali at Hajipur in Sessions Trial No.428 of 2006 arising out of Patepur P.S. case No.9 of 2006.

2. The case of the prosecution, according to the Informant Chunchun Mandal (P.W.7), is that on 28.1.2006 while his daughter, aged about 7½ years, was returning along with Vikash Sahani (P.W.1), also aged about 7 years, the Appellant caught hold of her and felling her on the ground, slit her throat. When Vikash Sahani



(P.W.1) started to create hulla, a number of persons reached there including Shankar Mandal and Dhanraj Mandal (P.W.2). Then the Appellant fled away. His brother Laxman Mandal and sister-in-law Sanjha Devi (P.W.5) also arrived and saw the dead body. When he started to go to the Police Station, the Appellant, his father Saini Mandal, his mother Fulo Devi, Ram Narain Mandal and Ram Prasad Mandal along with other villagers came and forcibly took away the dead body and set it on fire. The occurrence is said to have taken place at 6 P.M. whereas the information was given at 9 P.M. to the Officer Incharge Binay Rai (P.W.6) at the Police Station, which was 12 kilometers from the place of occurrence.

3. During trial the prosecution examined eleven witnesses. P.W.3 Mahashankar Mandal, P.W.4 Ganga Devi, mother of the deceased, P.W.5 Sanjha Devi, P.W.8 Kari Mandal, P.W.9 Nagendra Mandal and P.W.10 Suryadeo Mandal have been declared hostile. Even though P.W.6 Binay Rai, the Investigating Officer, was examined after P.W.3, P.W.4 and P.W.5 his attention was not drawn to their statements recorded under Section 161 Cr.P.C. and hence the fact that these witnesses had earlier supported the case of the prosecution has no meaning. P.W.11 Ratnesh Kumar is a formal witness on the point of seizure of blood stained earth whereas P.W.2 Dhanraj Mandal and P.W.7 Chunchun Mandal (the Informant) are

hearsay witnesses. P.W.1 Vikash Kumar Sahni, a boy who was aged about 7 years, is the sole eye witness.

4. Before we discuss his evidence it would be proper to examine the evidence of the hearsay witnesses. P.W.2 Dhanraj Mandal stated that on the date of occurrence he heard hulla that the Appellant had cut the deceased but he did not see the dead body nor does he know as to from whom he had heard about this occurrence. He also stated that he was being examined the first time in the present case.

5. P.W.7 Chunchun Mandal, the informant, stated that on the date of occurrence when his daughter was returning along with P.W.1 and had reached Musapur chowk he heard that the Appellant had cut his daughter. When he reached home he saw the dead body and became unconscious. He proves his signature on the fard beyan (Exhibit 1/1). He stated in cross examination that he did not talk to anyone about the occurrence. We thus find that he has given a complete go bye to the later part of the occurrence which was that when he was taking his daughter to the Police Station, the family members of the Appellant and he himself had snatched away the dead body and set it on fire.

6. P.W.1 Vikash Kumar Sahni, the sole eye witness, was aged about 7 years on the date of occurrence. He has given a very



short deposition supporting the fact that when he was returning with the deceased and reached a certain point the Appellant caught hold of her and cut her neck. The Appellant also tried to catch him but he escaped. He was found fully competent to depose by the Court. In cross examination he stated that the deceased was his cousin sister and the Appellant was also cousin brother.

7. P.W.6 Binay Rai, the Investigating Officer, stated that on the date of occurrence he recorded the fard beyan of the Informant and proves the same as Exhibit 1 and the formal First Information Report as Exhibit 2. He stated that he inspected the place of occurrence which was near a palm tree and there was blood stained earth found there which was seized. He also found some burnt wood and a gallon of 5 litres from which smell of kerosene oil was coming out which was seized in presence of witnesses. We find that no bones or remnants of blood was found at that place which would corroborate the earliest story of burning the dead body.

8. On an analysis of the evidence we find that apart from the oral testimony of a child witness by way of P.W.1 there is no other cogent material even by way of objective material. Since the prosecution has abandoned the earliest story of burning the dead body the Court would naturally view the fact of non-production of postmortem report adversely. We would also not think it safe to sustain

the conviction of the Appellant on the sole testimony of P.W.1.

9. In the result, the appeal is allowed by setting aside the judgment of conviction dated 14.2.2011 and order of sentence dated 22.2.2011 passed against the Appellant by the Additional Sessions Judge, Fast Track Court No.IV, Vaishali at Hajipur in Sessions Trial No.428 of 2006 arising out of Patepur P.S. case No.9 of 2006. The Appellant Kunwar Mandal alias Ram Kumar Mandal, who is in custody, be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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