

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.879 of 2014

(Against the Judgment of conviction dated 17.10.2014 and Order of sentence dated 18.10.2014 passed by the 2nd Additional Sessions Judge, Purnea, in Sessions Case No.278 of 2009/Trial No.26 of 2014/C.I.S. No.0002108 of 2013).

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Md. Tanwir, son of Md. Zaheer, resident of village - Chandbhathi, P.S. - Dagarwa, District- Purnea.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : Mr. Abdul Wadood, Advocate.

For the State : Mr. A.K. Sinha, A.P.P.

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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: 20-04-2016

The sole Appellant has been convicted under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and fine of Rs.10,000/-, in default of which, to undergo further rigorous imprisonment for one year, under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and fine of Rs.10,000/-, in default of which, to undergo further rigorous imprisonment for one year and Section 201 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and fine of Rs.5000/-, in default of which, to undergo further rigorous imprisonment for six

months vide Judgment of conviction dated 17.10.2014 and Order of sentence dated 18.10.2014 passed by the 2nd Additional Sessions Judge, Purnea, in Sessions Case No.278 of 2009/Trial No.26 of 2014/C.I.S. No.0002108 of 2013.

2. The case of the Informant Bijli Devi (P.W.9) is that her daughter Phuljharia Kumari was kidnapped at 03.00 A.M. on 29.10.2008 by the Appellant. This written information was given on 01.11.2008 to the Officer Incharge, Dagarwa, Purnea, on the basis of which the present F.I.R. was lodged.

3. During trial, the prosecution examined altogether 12 witnesses.

4. Having gone through the evidence of the witnesses, we see that apart from suspicion, there is no cogent material for maintaining the conviction of the Appellant, the circumstances which we discuss hereinafter.

5. P.W.9 Bijli Devi, the Informant, has stated that on the date of occurrence, a 'Mela' was being held in the village. In the night, her step daughter Phuljharia Kumari was sleeping with her grand mother Muniya Devi (P.W.2). On the next morning, when she found her child missing, she asked Muniya Devi (P.W.2) as to where she had gone, then Muniya Devi (P.W.2) informed her that at about 03.00 A.M. in the morning, the Appellant, who was the friend of her

brother-in-law Mohan Rishi, took her to see 'Mela' because she was crying for the same. Her mother-in-law told him that he handover the child to Surajmani Devi, her aunt (P.W.3), who had also gone to see 'Mela'. When she started making enquiries from everyone including P.W.3 Surajmani Devi, she learnt that her child had never come to 'Mela'. Then she gave information to Mukhiya and also found the Appellant missing from his house. Three days later, the dead body of her child was recovered in a decomposed stage. It also appeared that the child had been raped and then she was killed.

In cross examination, it was suggested to her that, in fact, there was financial transaction between her brother-in-law Mohan Rishi and the Appellant and it was on account of dispute, arising out of it, that the present case was instituted.

We, thus, find from her evidence that her evidence is contradictory to her statement in the Fardbeyan. She has developed the case substantially saying that the Appellant had been given the charge of the deceased by her grand mother (P.W.2) whereas in the First Information Report, there is only a general allegation that the Appellant had kidnapped the deceased

6. P.W.2 Most. Muniya Devi stated that on the date of occurrence, a 'Mela' was being held in the village. While her grand daughter was sleeping at night, she woke up to urinate and when she

returned, she started crying to be taken up to see dance in the 'Mela'. At that point of time, the Appellant came to her house and so she told him to take her to 'Mela' where her aunt had gone and handover her over to her aunt and then they left. Four days later, the dead body of the deceased was found in the field from which it appeared that, in fact, the deceased had been killed by cutting her neck.

In cross examination, she stated that she did not tell Mohan, her son, that Phuljharia, the deceased, had gone to see 'Mela' and asserted that at about 03.00 A.M. in the morning, the Appellant had come to her house, which appears to be highly unlikely. She further stated that the Appellant used to meet her son often but she did not talk with him. On the fateful day at 03.00 A.M., the Appellant had come to meet her son and after gossiping with him in the courtyard, he went from there. The 'Mela' was being held 50 yards away from her house.

We find it difficult to believe her story that the Appellant visited her house at 03.00 A.M. in the morning to talk to her son and, thereafter, the deceased was sent alongwith him.

7. P.W.1 Jhapti Devi stated that at that point in time, she was at her home while her daughter Phuljharia Kumari was sleeping. In night, when her grand mother woke up to urinate, the child started crying complaining that she be taken to the 'Mela'. At that point in



time, the Appellant came to the house of the Informant, so P.W.2 Muniya Devi, the grand mother asked him to take her to 'Mela' and give her to her aunt. She also stated that the Appellant was the friend of Mohan Rishi, the husband of P.W.3. and he used to visit their house. She further stated that the Appellant had not brought the deceased, so Altaf Mukhiya and others went to the house of the Appellant and started to question him but he did not give any satisfactory reply.

In cross examination, her attention was drawn to the earlier statement that she had not given such a statement or even a hearsay account of the occurrence.

8. P.W.3 Surajmani Devi, the wife of Mohan Rishi, stated that the deceased was the niece of her husband and on the night she had also gone to the 'Mela' and when she returned in the morning, she learnt that the Appellant had taken to the child to the 'Mela' but did not return. However, she had not seen the child and the Appellant at the 'Mela'. She clarified that the Appellant was the friend of her husband. She also stated that the Appellant was not at his home at that point in time and two days later he returned, so they alongwith Mukhiya went to the house of the Appellant where the father of the Appellant stated that the Appellant was not at home whereas rest stated that the Appellant was present so he was caught and brought

out and was taken to the member of the Samiti, i.e., Jafar from where he was set free by others. She stated that about 2000-4000 people had been gathered in the 'Mela' and it was not possible for anyone to find out anyone in the 'Mela'. She also had not seen the Appellant going with the deceased.

In cross examination, it was suggested to her that, in fact, there was financial dispute between Mohan Rishi and the Appellant which led to false implication of the Appellant.

9. P.W.4. Arjun Rishi has stated that he had also gone to the 'Mela' and in the next morning, he learnt that the child had been killed. In the meanwhile, Bijli Devi and her mother-in-law told him that the friend of Mohan, the Appellant, had come to their house and because the child was crying, the Appellant had taken to her to see the dance but she did not return. When the villagers went to the house of the Appellant he was not found there and then, later on, he was caught. On queries of the Mukhiya, Appellant said that he had taken to the child to the 'Mela' and left her there. Thereafter, the Mukhiya directed the Appellant be taken to the Member of the Samiti, i.e., Jafar but he fled from there. 3-4 days later, the dead body of the deceased was found.

There is nothing else which is of note in his cross examination.

10. P.W.5 Krityanand Rishi has stated about the recovery of the dead body and having heard that the grand mother had entrusted the deceased to the Appellant saying that she be handed over to her aunt but she never returned and he stated that he had left her. He also stated that he had gone to the 'Mela' on the fateful night. He himself had not seen the Appellant going to the house of Mohan Rishi even while they were friends.

11. P.W.6 Most. Raso is also on the same fact but evidently she is not an eye witness of the occurrence.

12. P.W.7 Ranjeet Rishi repeats the story and that he had not seen the Appellant with the child at the 'Mela'.

There is nothing of note in his cross examination.

13. P.W.8 Banarsi Rishi is also on the same point that in the next morning, he learnt that the child was missing and, in fact, the grand mother had entrusted the child to the Appellant to see the 'Mela' from where she had disappeared. Three days' later the dead body was recovered. In his cross examination, there is nothing of note.

14. P.W.10 is Dr. Indra Narayan, who conducted the Post-Mortem Examination of the deceased on 02.11.2008 and found the following injuries on her person:

(i). Wound over upper part of front of neck with

decomposing skin and maggots all over bone deep.

- (ii). Abrasion over lebia majora, swelling of lebia majora and minora. Tear in the lower part of vagina and vulval swelling. Vaginal swab taken for his pathological examination. Showed a few R.B.C. and dead spermatozoa.

The body was decomposing and maggots present all over, mandible was exposed and eyes were eaten up.

On dissection:

Head and Neck-Bones- normal, Tissues brain and meninges decomposing.

Chest-Bones- normal, Heart and Lungs-decomposing.

Abdomen-Liver, Spleen and Kidneys-Pale and decomposing .

Stomach-contained semi digested food, Intestine contained foul smelling, gases and faces.

Urinary bladder- empty.

Uterus-Normal.

Time elapsed since death-within five days.

In the opinion of the Board, the death was caused by cutting the throat after committing rape.

He proves the Post-Mortem Report as Ext.1.

15. P.W.11 Tarkeshwar Prasad Singh is the Investigating Officer, who has stated about receiving the written information and forwarding the same to the concerned police station on the basis of which the formal First Information Report was instituted which he

proves as Exts.2, 2/1 and 3 and also that he recovered the dead body, the Inquest of which he prepared, which is marked as Ext.3. He described the condition of the dead body and then it was sent for Post-Mortem examination. He also stated that the accused was arrested on 09.11.2008 from his own house and remanded to the police custody. He then submitted chargesheet.

16. P.W.12 Altaf Hussain is a formal witness and he proves the written application of the Informant Bijli Devi (P.W.9) and his signature on the same as Ext.2/2. It appears to be a written report which was initially given on the basis of which the First Information Report was instituted.

17. On the other hand, the defence has also examined one witness, namely, Md. Farid, who stated that the Appellant used to work in Ludhiana alongwith him and was present there on the fateful day and when he returned from there, suddenly, he was arrested by the police and remanded to judicial custody.

18. We, thus, find from the evidence of the witnesses, discussed above, that the Informant had not initially stated that she had handed over the deceased to the Appellant to go to the 'Mela', but later developed this story. Hence, even the circumstance of the Appellant having been last seen with the deceased is not reliable. In such circumstances, giving benefit of doubt to the Appellant, we

acquit him of the charges.

19. In the facts and circumstances of the case, this appeal is allowed. The Judgment of conviction and order of sentence passed against the Appellant, above named, is set aside. He is acquitted of the charges. He is in jail custody, so he is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/A.F.R.

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