

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.558 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- BHOJPUR

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Rinki Devi W/O Pramatua Ram R/O Village - Kutukpur Dayalchak, District - Bhojpur

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajni Ranjan, Adv.

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

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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: 23-05-2016

1. The Appellant has been convicted and sentenced to Rigorous Imprisonment for life and imposed fine of Rs. 10,000/- for the offence under Section 302/34 of the Indian Penal code and in default of payment of fine she has further been sentenced to simple imprisonment for six months and further three years rigorous imprisonment and fine of Rs. 10,000/- for the offence under Section 201/34 of the Indian Penal Code and in default of fine she has further been sentenced to Simple Imprisonment for six months and both sentence have been directed to run concurrently by judgment of conviction dated 20.04.2011 and order of sentence dated 28.04.2011 by the learned 3rd Additional Sessions Judge, Bhojpur Ara in Sessions Trial No. 589 of 2008 arising out of Barahara P.S. Case No. 126 of 2008, G.R. No. 1538 of 2008.

2. The case of the prosecution according to Krishna Rai (P.W 9) is that when he was returning he saw a big crowd near the

river 'Ganga'. When he asked Anil Singh and Pankaj Kumar Singh (non-examined) as to what was the crowd about, they disclosed that his son had been killed and buried in the river by the Appellant (his sister-in-law 'Bhabhi') and her husband i.e. his brother and the villagers had caught hold of the Appellant and taken her to the river and they were looking for dead body. Hearing this he ran towards the river and on the disclosure statement of the Appellant, the dead body was recovered from the bed of the river. He further disclosed that in his absence his family members had started to look for their child when Rana Pratap Singh (P.W. 1) disclosed that he had seen the Appellant and her husband co-convict Parmatma Rai going towards river and both of them were seen returning at about 3 p.m without the child. On his information the villagers had interrogated the Appellant who disclosed that she along with her husband had killed the child and hidden the dead body under bed of the river after which the child was recovered. He stated that there was some dispute within the family and therefore, this occurrence had been committed

3. During trial the prosecution examined 10 witnesses but there is no direct evidence and the case is based on circumstantial evidence which has to be tested as to whether the chain of circumstances is complete.

4. P.W. 1 Rana Pratap Singh stated that about 3-4 p.m he had seen the Appellant and her husband Parmatma Rai going along with the child towards the river and about one hour later he saw her

returning alone. Her cloths up-to the waist was wet. Sometime later when the child went missing the villagers started looking for him and it was decided that they should question the present Appellant. Initially she denied but later on she conceded that she had killed the child and had hidden the dead body under the bed of the river. She then accompanied the villagers to the river where efforts were made to recover the dead body and thereafter the dead body was recovered.

5. P.W. 2 Dwarika Singh stated in his examination- in-chief likewise but in his cross-examination he stated that he had seen only the Appellant going towards the river with the child and returning alone and the dead body was not recovered in his presence.

6. P.W. 3 Lallan Ram stated while they were looking for the child they went to the house of Dwarika Ram (P.W. 2) where they were informed that the Appellant had taken the child towards the river at which they went to the river side but could not find the child. They then questioned the Appellant who disclosed about killing the child and putting the dead body under the bed of the river. She was taken to the river where the dead body was recovered. He stated that the police arrived after the recovery of the dead body.

7. P.W. 4 stated that on the date of occurrence he saw a big crowd at the door of Dwarika Singh (P.W. 2) and everyone looking for the child. Dwarika Singh (P.W. 2) discussed that the Appellant and her husband Parmatma Rai had taken the child towards the river so they went to river side but could not find him

then they questioned the Appellant who disclosed about the location of the dead body so they went and recovered the dead body.

In cross-examination he conceded that he was not an eye-witness to any part of the occurrence.

8. P.W. 5 Hare Ram Rai is the brother of the informant Krishna Rai and co-convict Parmatma Rai who stated that in the evening at about 6 P.M he was informed by the child's mother that her child was missing at which he started looking and went to the door of Dwarika Singh (P.W. 2) where number of persons had gathered. Dwarika Singh disclosed that the Appellant and co-convict Parmatma Rai had been seen going towards the river with the child and thereafter they returned alone. The Appellant on questioning confessed they had killed the child and on her pointing out the dead body was recovered.

In cross-examination he explained the relationship between the parties and that he was not an eye-witness to any part of the occurrence.

9. P.W. 6 Phool Kumari Devi, the mother of the deceased stated that about one and half years ago when she was searching for her son she went to the house of P.W. 1 Rana Pratap Singh who stated that his son had been taken by the Appellant and co-convict Parmatma Singh towards the river. They looked for the child by the river side but they could not find him so they questioned the Appellant who confessed her guilt and stated that they had buried the

dead body under the bed of the river. On her pointing out the dead body was recovered. She stated that it was P.W. 3 who suggested that the Appellant be caught so she would disclose where the child was.

In cross-examinations he conceded that she was not an eye-witness to any part of the occurrence. She stated that there was no dispute between her family and the Appellant.

10. P.W. 7 Devanti Devi is the sister-in-law of the informant who supported the factum of the occurrence to the extent that the child had been reportedly seen going along with the Appellant and her husband and then returning alone and it was on her pointing out the dead body was recovered.

11. P.W. 8 Dr. Arun Kumar proved the post mortem examination report as Ext. 1.

“Ante mortem Examination: - Blood around mouth and nose Eyes and mouth closed, Eyes congested.

P.M. findings: - cervical vertebra $\frac{3}{4}$ # and c ligament Lear.
Injury to spinal cord c Lacuation

Thoracic Cavity – congested.

Abdominal cavity – All abdominal viscera were congested.

Time elapsed since death – within 24 hours.

Cause of death – injury to vital structure like cervical vertebra and spinal cord, lead to instant death”.

12. We thus find there is no evidence that there was sign of throttling and in fact the deceased appears to have died on account of injury of cervical vertebra and injury to the spinal cord.

13. P.W. 9 Krishna Rai the informant reiterated his

version given in the ferdbeyan and that the dead body was recovered on the pointing out of the Appellant.

In cross-examination he stated that the accused Parmatma Rai was his brother and they were all separate in mess and there was no dispute between them. He stated about the dead body having been recovered in his presence.

14. P.W. 10 is the Investigating Officer who states about entry of sanha on information about the recovery of the dead body of the child and on the pointing out of the Appellant. He proved the fard beyan as Ext. 3 and the formal first information report as Ext. 4 and the inquest report as Ext. 5. He describes the place of occurrence being the river side.

In cross-examination he stated that he had recorded the statement of the Appellant only the next day on i.e. 25.05.2008.

15. On going through the evidence of the witnesses we find that the circumstances against the Appellant and co-convict Parmatma Rai are to the following effect :

- i. That the Appellant and Parmatma Rai were seen going towards the river along with the child.

However, P.W. 1 and P.W. 2 had given contradictory evidence in this regard since whereas P.W. 1 stated that the Appellant and Parmatma Rai both were seen going towards the river with the child. P.W. 2 only states about the Appellant

having gone towards the river with child

- ii. One hour later the Appellant had been seen returning alone with her clothes wet up to the waist.

However, the search for the child did not begin till about 6 p.m and therefore, there appears ample time gap between time Appellant and the co-convict Parmatma Rai were last seen with the child and his having gone missing.

- iii. It is on the discovery statement of the Appellant that the dead body was recovered from under the bed of the river. However, from Ext. 5 we find no sign of mud or water on the person of the deceased which makes the story doubtful.

Further there is no signature of the Appellant on the inquest report which would have been the only authentic proof that it was on the discovery statement of the Appellant that the dead body was recovered.

- iv. Extra Judicial confessional of the Appellant. However, the same is not corroborated by the medical evidence since no sign of throttling was found on the person of the deceased as was the version of the Appellant.

16. Moreover, we find the Appellant was examined by the Investigating Officer only the next day i.e. 25.05.2008. If the Appellant had been caught by the villagers even before the recovery of the dead body as per the prosecution case, there was no reason why she was examined by the Investigating Officer the next day.

Thus we find that the chain of circumstance is not complete and in our opinion the conviction of the present Appellant as well as non appearing co-convict Parmatma Rai who is husband of the Appellant, is not sustainable.

17. In the result the Appeal is allowed. The impugned judgment of conviction dated 20.04.2011 and order of sentence dated 28.04.2011 passed in Sessions Trial No. in Sessions Trial No. 589 of 2008 arising out of Barahara P.S. Case No. 126 of 2008 G.R. No. 1538 of 2008 by the 3rd Additional Sessions Judge Bhojpur at Ara is hereby set aside.

Appellant Rinki Devi who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

Further, co-convict Parmatma Rai, is also directed to be released forthwith, if not wanted in any other case in view of judgment of conviction having been set aside.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Prakash/-

AFR/NAFR	
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