

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.73 of 2013

Arising Out of PS.Case No. -21 Year- 2011 Thana -KOCHAS District- Rohtas

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Firoj Mian Son of Syed Rien Resident of Village Kochas, P.S- Kochas, District - Rohtas.

..... Appellant/s

Versus

The State Of Bihar

..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikram Deo Singh
Mr. Sada Nand Roy
Mr. Manish Chandra
For the State Mr. S.N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE SANJAY KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 29-03-2017

The sole appellant stands convicted under section 302 IPC including section 3(2) (v) of the SC/ST Act for having killed 14-year-old daughter of the informant (P.W.4). The learned trial court on finding him guilty sentenced him to undergo R.I. for life with fine having default clause and R.I. for life with fine having default clause respectively under the aforesaid two penal provisions. Both the sentences were, however, directed to run concurrently.

2. The factual background as unfolded by the prosecution at the trial is that on the night of 22nd- 23rd February, 2011, the victim was forcibly taken away by the appellant and co-accused Banti from the house. The following morning, the dead body of the victim was found deserted in a nearby wheat field. P.W.4, being the father of the deceased, lodged the Fardbayan on 23.02.2011 at 9.30 A.M. at the place where the dead body of the deceased was



found lying. In the fardbayan (Ext.2) the father has stated that his daughter (victim) was missing from the preceding evening. A search to trace her out was carried out which remained unfruitful/fruitless. He came back home and slept with the family. The following morning, it was revealed to him that a deadbody of a girl was lying in the field whereafter he went there and identified the body as that of his daughter. Recording of the Fardbayan by the Sub Inspector of Police-cum-SHO Kochas police station (P.W.6) ignited the investigation wherein the statements of the witnesses were recorded. The body was sent for post mortem examination. During investigation, a photograph of the co-accused Bunti with inscription thereon allegedly in the handwriting of the victim was recovered from the school bag of the victim which was seized under a memo in presence of P.W.7. Upon receipt of the post mortem report (Ext.4) and after conclusion of the investigation, charge-sheet was laid against the appellant and co-accused Bunti. From the records, we find that a claim of juvenility was raised on behalf of the co-accused Bunti and his case was separated. Upon commitment, the case came on the file of the learned trial Judge for trial and disposal where charges were framed and read over/explained to the appellant to which he pleaded not guilty.

3. To further the prosecution case at the trial, the prosecution examined 08 witnesses. P.W.1 is the minor son of the informant. P.W.2 is the elder sister of the victim. P.W. 3 is the mother of the victim whereas P.W. 4 is the informant himself. P.W.5 Mangal Baid has been produced who has given a hearsay account of the occurrence. P.W.6 is the I.O. whereas P.W.7 is a relative (cousin brother) of the informant who had undertaken a search for the victim during the relevant night together with the mother of the deceased/victim. He is also witness to the recording of the FIR as well as the seizure of the photograph



of the co-accused Bunti from the school bag of the victim girl. P.W. 8 is Dr. Rajesh Kumar Singh who held the post mortem and proved the post mortem report (Ext.4). The defence of the appellant was complete denial of his involvement in the case. On critical analysis of the evidence adduced by the prosecution, the learned trial court held that the charges framed against the appellant were proved beyond shadow of all reasonable doubts and convicted and sentenced him in the manner stated above.

4. We have heard Mr. Vikramdeo Singh in support of the appeal and Mr. S.N. Prasad, APP for the State.

5. Mr. Singh would urge that it is a case where no witness has seen the killing of the deceased. In the FIR lodged by the father it has not been alleged that the victim was dragged on the relevant night from her house by the appellant with the assistance of the co-accused Bunti. During the deposition, P.Ws 1 and 2 have given a twist to the prosecution case and stated that on the relevant night the appellant and co-accused Bunti had come to the house of the victim and had forcibly taken her from the house and bolted the door of the house from outside. He would urge that from the evidence on record, it is explicit that the house of the informant is surrounded by the house of several persons including the agnates/relatives of the informant. No one has come forward to depose that they had seen the dragging of the victim by the appellant on the relevant evening or about the hearing of the alarm raised by P.Ws 1 and 2. This creates a serious doubt on the prosecution case projected through the evidence of P.Ws 1 and 2. There are sharp contradictions in the evidence of the informant if read along with the evidence of his son P.W. 1 and daughter P.W.2. P.W. 7 is a close relative and a neighbour of the informant. His evidence gives credence to the prosecution case adumbrated in the FIR where



the informant has only raised his suspicion against the appellant of having killed his daughter. The evidence of P.W.7 runs in tune with the deposition of the mother of the victim (P.W.3). If the evidence of P.W.s 7 and 3 is believed, it would appear that the prosecution purposefully injected the story of forcible dragging of the victim by the appellant on the relevant night from the house through the testimony of P.Ws 1 and 2. In his submission, the prosecution has completely failed to prove the case as projected at the trial beyond shadow of reasonable doubts.

6. In opposition, Mr. Prasad has supported the impugned judgment of conviction and order of sentence. He would urge that P.W.1 is a ten-year-old son of the informant who has, in no uncertain term, deposed that it was the appellant and the co-accused Bunti who had forcibly taken the deceased from the house on the relevant night. Similar is the evidence of P.W.3. The informant was not present at the house. The factum of dragging of the deceased on the preceding night by the appellant was, therefore, not stated or disclosed by him in the FIR. The testimony of P.Ws 1 and 2, if believed, and read with the testimony of the doctor P.W.8, the charge against the appellant stands crystallized and proved.

7. In the light of those submissions made at the Bar, we shall scan the relevant evidence to satisfy us whether the prosecution has been able to prove the charge against the appellant beyond shadow of all reasonable doubts. Before we do so, it may be stated, as evidenced from the record, that the prosecution story relates to the death of a young girl, aged about 14 years, who belonged to Nut community/Mahadalit community. The informant has two daughters. The elder one P.W.2 was married at the tender age as she has claimed herself. Another son of the informant was a school going boy. We



further find from the evidence of the informant as well as his wife (P.W.3) that they were surviving on beggary or doing menial job (Mazdoori).

8. No serious submission has been advanced by the appellant with regard to death of the deceased being homicidal. However, on going through the evidence of the doctor (P.W.8) it is found that autopsy on the dead body of the victim Rina Kumari (aged about 14 years) was held by him on 23.02.2011 at 1.45 P.M. and the following ante mortem injuries were found on her person:-

(i). "Incised wound 3 ½" x 1" x chest cavity deep on lower portion of chest in middle left to midline (wound vertical).

(ii) Incised wound 2 ½" x 1 ½" x abdominal cavity deep loops of intestines out from the wound 2" below the naval.

(iii) Incised wound 3" x 3/10" x deep tissue of neck deep cutting the trachea and shifting it transversely"

9. The doctor opined the death caused within 18 hours and the reason of death was due to injury caused by sharp-cutting instrument. We have no hesitation, in view of above, to hold the death of the deceased was homicidal due to above injuries caused to her by sharp-cutting instrument/weapon.

10. P.W. 4, in his examination-in-chief, has stated that a search for his daughter was made on the relevant night but she was not traced. In the morning it was revealed that she has been done to death. He has suspected the hands of the appellant as he used to visit his house and was having an evil eye on her daughter. In paragraph 3, he has stated that on the relevant night his son and daughter P.Ws 1 and 2 had disclosed that in the preceding night the appellant and the co-accused Bunti had forcibly taken away the victim. In paragraphs 6 of his cross-examination, he has stated differently when he says that only on the date when the dead body of his daughter was found he could know that the appellant used to visit his house. His wife was also not aware of



this fact. The victim had also not disclosed to him that the appellant used to tease her or stalk her. In paragraph 9 of his deposition he is very specific that his son and daughter P.Ws 1 and 2 had disclosed to him that at about 8.00 P.M. on the preceding evening the appellant and the co-accused Bunti had come to the house and forcibly dragged her (victim) from the house when he was not there. On that day he along with his wife was staying in village 'Kapasiya', 2-3 kms away from his house. The following morning his daughter P.W.2 and son P.W.1 had traveled to 'Kapasiya' and informed him that the victim was not in the house and that she was forcibly taken away by the appellant. Thereafter, the informant straightway went to the wheat field where the dead body of the deceased was lying and upon arrival of the police the fardbayan was made. P.W. 7 has, however, deposed that on the preceding night the wife of the informant had come to his house in search of the victim and thereafter both of them started searching for the victim and on being unsuccessful he returned to the house of the informant where he (informant) was present with his son and daughter. Another important fact has been disclosed by him which gravely corrodes the evidence of P.Ws 1 and 2. This witness has stated that the house of the informant was not locked from outside when he went to meet the father of the victim who was present in the house. He is a close relative of the informant. We would now turn to the evidence of P.Ws 1 and 2. P.W. 1 is a small boy aged about eight years. The trial court assessed his understanding and thereafter permitted his deposition. His deposition would not be very relevant to dig out/ferret out the truth. We would, however, only note here that his statement was recorded by the prosecution under section 164 Cr. P.C. before his deposition in court. While narrating the incident he had also stated that he could see the assault by knife being inflicted on his sister (victim) by the



appellant. The testimony of P.W. 2 shall assume greater significance. If we have to accept her testimony then a link is firmly established to find the guilt of the appellant considering the proximity of time between dragging of the victim from the house by the appellant and the discovery of the dead body of the victim from a nearby wheat field in the following morning. It may be recounted here that in the FIR lodged by the father in presence of his son and daughter the story of dragging away forcibly the victim by the appellant from the house of the informant in the preceding evening has not been disclosed. The fardbayan was made in presence of P.W.7 who is the cousin of the informant and a witness to the recording of FIR. P.W. 7, by profession, is a teacher in a government middle school where the victim was studying. His entire evidence is in tune with the prosecution story spelt out in the fardbayan that the victim was found traceless from the house since the preceding evening. He made a hectic search of the victim with her mother (P.W.3) who had come to his house in search of the victim. Having failed to trace her out, he went to the house of the informant and found him present there. The story put up by the informant during his examination in court that he was away from the house and was at village 'Kapasiya' stands completely belied. Reverting to the evidence of P.W.2, we find that this witness was also present at the time of lodging of the Fardbayan. She had disclosed to her father about forcible dragging of the victim on the preceding night from the house by the appellant. However, she did not disclose this fact to the I.O. when the death inquest proceeding was carried out by him. The informant has testified that on the following morning his son and daughter (P.Ws 1 and 2) had come to his place of stay in village 'Kapasiya' around 2-3 kms away from his house and disclosed the aforesaid fact to him whereafter he directly rushed to the place where the deadbody of his



daughter was found. Surprisingly, neither P.Ws 1 nor P.W. 2 has stated so. Incidentally, we may note here that from the evidence of the I.O. (P.W 6) and P.W.7 (cousin brother of the informant) who is a teacher where the victim was studying, it is revealed that the victim was in the habit of going out from the house in the company of her boyfriend(s). We also keep in mind that the FIR was lodged on the following day at about 9.30 A.M. when the dead body of the deceased/victim was found lying in the field. If the evidence of P.W.1 and 2 insofar as taking away the victim from the house on the preceding evening of the recovery of her dead body is held a purposeful improvement in the prosecution case then the prosecution case would be that the victim was traceless from the preceding evening and the prosecution suspected the hand of the appellant in the crime by alleging that the appellant used to visit the house of the informant having a lewd eye on her but her marriage was fixed elsewhere. The prosecution relies on Ext 3 which is the photograph/picture of the co-accused Bunti recovered from her school bag on which the following was found written”

“Raja-
9801875346
I love you.”

11. The prosecution thus wants us to believe that a kind of romance/love affair was going on between the co-accused Bunti and the deceased. The involvement of the present appellant on the basis of the Ext. 3 produced by the prosecution cannot be inferred.

12. On a close scrutiny of the evidence of P.Ws 1 and 2, insofar as their claim that the appellant had visited the house of the informant on the preceding evening/night and on the point of dagger forcibly took her away, do not appear to us convincing, particularly in view of the evidence of P.W.3



(mother), the informant (P.W.4) and P.W.7. It seems to us that the story of dragging away the victim by the appellant on the preceding night from the house is a well-thought interjection in the prosecution case to provide a strong link in the chain of circumstances. Upon disbelieving that part of the evidence of P.Ws 1 and 2, the court is left with the prosecution story as stated in the fardbayan wherein the hand of the appellant in the crime was only suspected. We have already noticed that the house of the informant is adjoined by several houses, some of whom are agnates/relatives of the informant. No one has claimed to have seen the appellant going away with the victim or heard the cry raised by P.Ws 1 and 2. We may highlight here again the evidence of P.W. 1 at para 5 and the informant P.W.4 at para 6 that the appellant had never visited the house of the informant and knew about him or his any involvement with the victim only after the killing of the deceased.

13. As admitted by both parties, the prosecution case hinges on circumstantial evidence. In a case of such nature, the prosecution shall be obliged to prove every link of the chain of circumstances proving only the guilt of the accused to the exclusion of any other hypothesis consistent with the innocence of the accused. Reference in this regard be made to the case of State through CBI vs. Mahendra Singh Dahiya reported in AIR 2011 SC 1017. Unfortunately, the prosecution has failed to do so.

14. The discussions made above of the relevant evidence produced by the prosecution depict sharp contradiction(s) in the prosecution case and shrouds the prosecution case, as presented at trial, with dense cloud of suspicion. We do not find it safe on these materials to sustain his conviction.

15. In the result, the appeal is allowed. The judgment of conviction dated 23.01.2013 and order of sentence dated 28.01.2013 passed by the learned trial



court against the appellant is set aside. The appellant shall be set at liberty forthwith, if not required in any other case.

(Kishore Kumar Mandal, J)

I agree (Sanjay Kumar, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	23.03.17
Uploading Date	29.03.17
Transmission Date	29.03.17

