

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.547 of 1994

Against the judgment of conviction and sentence dated 30th September, 1994 passed in Sessions Trial No.21 of 1992 by the Sessions Judge, Muzaffarpur.

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Rameshwar Singh

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathy, Amicus curiae

For the Respondent/s : Mr. Dilip Kumar Sinha, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-09-2017

This appeal is by the appellant Rameshwar Singh, who has been convicted to undergo life imprisonment for offence under Section 302 of the Indian Penal Code and to further undergo R.I. for five years for the offence punishable under section 201 of the IPC in Sessions Trial No.21 of 1992 by the Court of Sessions Judge, Muzaffarpur vide the judgment dated 30th of September, 1994.

It is alleged against the appellant that he is intentionally and knowingly committed the murder of a boy aged about 12 years one Deepak Kumar. It is the case of the prosecution that on the date of



the incident, i.e. on 15.06.1991, Sanjay Singh, the informant P.W. 7 was plucking Ram Taroi (Lady's finger) in his field half kilo meter away from his village when he saw his cousin, the deceased Deepak Kumar along with Rajesh Kumar, the eye witness to the incident, P.W.8, going towards north for grazing buffalo. He saw the accused person going away hurriedly behind them and in a suspicious manner. He thereafter returned to his house after sunset, when Deepak Kumar did not return home it is said that the informant along with other relatives started searching for Deepak Kumar. They did not see him, but found the buffalo standing near a Gumti. Deepak Kumar was not there, failing to find him they returned to the house at 12 in the night. When Deepak Kumar could not be traced and did not come back in the morning they again started searching him went to P.W. 8 Rajesh Kumar and asked about Deepak Kumar when Rajesh Kumar, the eye witness P.W.8, told them that in the evening of the preceding day when they were grazing their buffaloe, Rameshwar Singh met them, took them to a place near the jungle on the bank of the river on the pretext of giving them Mango and Blackberry, there he caught hold of Deepak Kumar and threw him down on the ground, killed him by twisting his neck, removed his cloth, broke certain branches from the tree, threw the body of Deepak Kumar in the



river and put the wood on him, thereafter came to Rajesh Kumar sitting at some distance and watching all these and threatening him not to disclose anything to anybody and went away. On the basis of this information given by P.W.8, Rajesh Kumar, the informant and others went near the river, they found the body of deceased Deepak Kumar lying near the river bank on the shore. Based on this, the first information report was lodged and the motive for the act was that father of the accused one Sheo Shankar Singh had made an agreement with the mother of the deceased Deepak Kumar for sale of 8 kathas of land to meet the expense for marriage of the niece of the accused and Sheo Shankar Singh had received Rs.16,000/- from her and due to annoyance he committed the offence.

Sri Arun Kumar Tripathy, Amicus Curiae, for the appellant, took us through the evidence of the witnesses, particularly the statement of P.W.7, the informant Sanjay Kumar Singh and P.W.8 Rajesh Kumar, the discrepancies serious in nature in the statement and argued that in this case, the requirement of law with regard to the prosecution proving the case beyond reasonable doubt is not fulfilled and therefore, it is a case where acquittal is the only consequence.



Per contra, learned counsel for the prosecution refuted the aforesaid contention and argued that the statement of P.W.8, a small boy of 11 to 12 years, who is an eye witness to the entire occurrence is sufficient enough to bring home the case of the prosecution and as the statement of Dr. Manoranjan Kumar Shrivastava, P.W.2, clearly establishes that death of the deceased was due to throttling of the neck and the injuries found in his neck being proved, there is no iota of doubt that the appellant is guilty of the charges levelled and in convicting him, the learned Court has not committed any error.

We have heard learned counsel for the parties at length and we have perused the records in detail, particularly the statement of P.W.7, the informant Sanjay Kumar Singh and the P.W.8, the sole eye witness to the entire incident, Rajesh Kumar. If we analyze the statement of P.W.7, the informant, we find that Deepak Kumar, the deceased, was his cousin and he speaks about both deceased and Rajesh Kumar, P.W.8 grazing buffaloe on the date of incident and their going towards north of the village. He also speaks about seeing the accused Rameshwar Singh following them in a suspicious circumstance. In spite of this, his conduct in not following them becomes doubtful. That part, he further testifies that when he came home and when till late in the night, the



deceased Deepak Kumar did not come home, he along with others, who have been examined as witnesses, namely other members of the family, went in search of Deepak Kumar, he found the buffalo near a Gumti, but Deepak Kumar was missing. If that be so, a prudent man under such circumstances would immediately go and find out from P.W.8 Rajesh Kumar as to where he is, Deepak Kumar, the deceased or at least he would go to Rameshwar Singh, the accused, and try to find out has he any knowledge about the whereabouts of Deepak Kumar. This conduct of the witness P.W.7 Sanjay Kumar is again abnormal and it casts suspicion on the case of the prosecution. Finally, he speaks about going to the house of witness Rajesh Kumar, P.W.8 in the morning and there Rajesh Kumar narrated to him the entire story. In para 2 of his examination-in-chief, he talks about calling Rajesh Kumar and asking about whereabouts of Deepak Kumar by going to his house. However, in para 13, he says that in the morning, Rajesh Kumar himself came and narrated to them the story. When he is confronted with the statement given by him in the FIR, he says that he did not inform the police that in the next day morning, he had gone along with the family members to the house of Rajesh Kumar. He denies making such statement. This case is developed contrary to the FIR because Rajesh Kumar in his statement



explains that due to the threat given by the accused he did not tell anybody about the incident, but in the morning went to the informant and gave information. The story now that has come before the prosecution is entirely different from the one which is narrated in the FIR and in the statement of the witnesses, particularly P.W.7 under Section 161 Cr.P.C. This is a vital lacunae in the case of the prosecution which makes the entire case suspicious.

That apart, Rajesh Kumar, P.W.8 speaks about the accused taking Deepak Kumar putting him on the ground causing injury on his neck by throttling killing him, then going to a tree nearby plucking woods from there and removing cloths from Deepak Kumar, putting the body into water and then covering with the wood. All these under normal circumstances would have taken at least 10 or more minutes and it is surprising that this boy sits there does not try to run away, make a hue and cry or try to save Deepak Kumar. This conduct of the witness is also highly suspicious and beyond a prudent person approach. Even if he is a child about 12 years when such an incident is taking place, he would have run away from the place and informed somebody. His conduct further in keeping quite for the whole night because of the threat also becomes doubtful when we analyze in the backdrop of the



contradictory statements made by P.W.7, the informant and this witness. These are vital lacunas in the prosecution case and they are not explained by the prosecution.

The aforesaid conduct of P.W.7 Sanjay Kumar Singh and P.W. 8 Rajesh Kumar is highly suspicious and this Court does not have faith in their statements and feels that their statement is not credit worthy. That apart, the doctor in the postmortem report and his statement in the Court, i.e. P.W.2 Dr. Manoranjan Kumar Shrivastava, indicates that he found a bruise 1/2" x 1/2" on the left side of the neck and there were abrasion by nail mark present in this injury. If that be so, there is no forensic or scientific test conducted by examining the nail of the accused and corroboration of this medical evidence by medically examining the accused. This is another vital discrepancy and lacunae in the case of the prosecution.

Another vital aspect of the matter is that the accused is said to have removed the cloth of the deceased and then thrown him in the water. It is not known as to why once the accused has killed the accused why the cloths should be removed before throwing him in the river. Apart from the fact that cloths have not been recovered and have not been exhibited, there is no medical evidence to show that the deceased was sexually assaulted after removing of the



clothes. All these make the case of the prosecution suspicious and we feel that these are sufficient enough ground to grant benefit of doubt to the appellant, particularly unusual conduct of P.W.7 and 8, Sanjay Kumar Singh and Rajesh Kumar, respectively, which we have discussed in detail and if these are considered to be vital lacking in the case of the prosecution, in our considered view, they are sufficient enough granting him the benefit of doubt and acquitting him.

Accordingly, we allow the appeal setting aside the judgment of conviction and sentence and acquitting the appellant of the allegations and charges levelled against him. He is on bail vide order dated 29.03.1995. Now, he is discharged from the liabilities of the bail bonds.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

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