

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.327 of 1993**

**Against the judgment of conviction dated 21<sup>st</sup> May, 1993 and order of sentence dated 25<sup>th</sup> May, 1993 passed by the learned 1<sup>st</sup> Additional Sessions Judge, Madhubani in Sessions Trial No.11 of 1986 ( 28/1992)**

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1. Rama Shankar Rai, S/o late Tejnath Rai
  2. Gopalji Rai, S/o Ramarekha Rai
  3. Nityanand Rai @ Gour Hari Rai, S/o Ram Kumar Rai
  4. Bijai Kumar Rai, S/o Ram Gulam Rai.
  5. Gauri Shankar Rai, S/o Ram Khelawan Rai
- All residents of village Madhepura, P.S. Pandaul, District-Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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**Appearance :**

|                      |   |                                                                                                                                           |
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| For the Appellant/s  | : | Mr. Murari Narain Chaudhary, Advocate<br>Mr. Shiv Shankar Sharma, Advocate<br>Mr. Vijay Kumar, Advocate<br>Mr. Mohit Srivastava, Advocate |
| For the Respondent/s | : | Mr. A. K. 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 : 12-10-2017**

The appellants herein have filed this appeal challenging their conviction ordered by the 1<sup>st</sup> Additional Sessions Judge, Madhubani vide judgment and order dated 21<sup>st</sup> of May, 1993 passed in Sessions Trial No.11 of 1986 ( 28/1992) convicting them to undergo rigorous imprisonment for life for offences under Section 376/34 and 302/34 of the Indian Penal Code.



It is the case of the prosecution that one Rameshwar Rai, a resident of village Madhepura, in Police Station Pandaul, District-Madhubani came to the police station at 11.30 P.M. on 01.12.1982 along with certain villagers and gave a ferdbeyan which was recorded by Sri C.D. Singh, Officer-in-charge of the police station, and the complaint was that when Rameshwar Rai returned back to his house around 8 P.M after performing official duty as Panchayat Sevak in Bisfi Block, it was reported to him by his family members that his daughter, a 15 year old child, (hereinafter referred to as 'the prosecutrix') had gone from her house at 3 P.M. to take chewing sugarcane from his field situated in the south of his village, but she had not returned back. It is said that Rameshwar Rai along with Ramchandra Rai, Ram Narain Rai, Ram Rekha Rai and others went in search of the prosecutrix to the sugarcane field. In the course of the search, they found certain marks going from eastern to the western ridge of the sugarcane field towards *Rahar* plants and signs of stampede were seen. On suspicion, they followed the track with the help of the torchlight in the said sugarcane field and 20/25 feet east to the said place, the dead body of the prosecutrix was found, her neck was tied, her dress was torn and blood was oozing from various parts of her body. It was the case of the informant that subsequently Ramrekha



Rai had told him that at about 3 P.M. he had seen Dhalai Mandal and Jatai Mandal of village Kamalpur on the eastern side of the sugarcane field cutting *Datun* from a *Sahar* tree. Another village Ram Parichhan Rai also stated that he had seen Bantha Mandal near the sugarcane field and, therefore, the informant stated that he has suspicion on the accused persons Dhalai Mandal and Jatai Mandal and he lodged the information. The accused were arrested and they were put to trial.

The prosecution in order to prove the case examined 16 witnesses. P.W.1 Lakshmi Paswan testify to the effect that he had seen the accused persons Gaur Hari Rai, Gaurishankar Rai and Bijay Kumar Rai coming out from the sugarcane field of the informant situated in the southern side of the village. P.W.2 Brahmdeo Jha, who also belongs to the village Baragaon, is said to have seen the prosecutrix near the sugarcane field between 3 to 3.30 P.M. and he said to have seen the accused persons Gopalji Rai and Gaur Hari Rai telling the prosecutrix that someone was committing theft in her sugarcane field. P.W.3 Radha Krishna Thakur also testifies about having seen the accused Ramashankar Rai and Gaurishankar Rai near the field. P.W.4 Ram Lakhan Rai speaks about noticing the accused persons, particularly Ram Chandra Rai near the field. P.W.5 Shiv Shankar Rai also speaks



about seeing Ramashankar Rai and Gopalji Rai coming to their house. P.W.6 Shivilal Mandal speaks about accompanying the informant and another person in search of the prosecutrix in the sugarcane field. P.W.7 Khokhai Paswan is a Chowkidar of the village and speaks about patrolling in the village and seeing the accused Ramashankar Rai in the village along with Bijay Kumar Rai, Gaur Hari Rai, Gaurishankar Rai and Ramashankar Rai. Similar statements have been given by most of the witnesses.

Except for the witnesses stating about seeing of the accused persons in or around the vicinity or moving around in various places of the village, there is no eye witness to the entire incident and none of the prosecution witnesses say anything about their seeing any of the accused persons committing the offence or even seeing the prosecutrix along with the accused persons. The totality of the entire evidence that have been produced by the prosecution is only to the effect that the accused persons were seen near the place of occurrence or in some places near the vicinity of the occurrence. Apart from the aforesaid circumstances, there is no iota of evidence to implicate the accused persons with the commission of the offence. Even evidence to the effect of the prosecutrix being last seen with the appellants are not available.



P.W.11 Dr. Munindra Bhutt, who had examined the prosecutrix, speaks about possibility of rape being committed on the prosecutrix by more than one person, but his evidence cannot be used, nor is there any circumstantial evidence enough for conviction of the appellants herein on such evidence.

Apart from the oral testimony of the witness with regard to their seeing the accused persons, as indicated hereinabove, there is no seizure of any cloth, equipment, instrument or material from any of the accused persons which can be said to be useful for implicating them with the commission of the offence. That apart none of the appellants has been subjected to any medical examination to establish their role or the acts said to have been committed by them. The entire case of the prosecution is based on circumstantial evidence and the only circumstance that has been brought on record by way of evidence is the presence of the accused persons in or around the place of occurrence. The principle of conviction of an accused on the basis of circumstantial evidence, i.e. last seen together with the deceased, has been analyzed by the Hon'ble Supreme Court in the case of **Subhash Chand Versus State of Rajasthan**, (2002) 1 SCC 702, and if the principle for convicting on the basis of circumstantial evidence which the prosecution was required to prove its case beyond



reasonable doubt as laid down in the aforesaid case are applied in the present case, it would be seen that there is no evidence of the accused or the prosecutrix being seen together, no incriminating material has been seized from any of the appellants and the chain of circumstances required to be established for convicting a person on the basis of circumstantial evidence are totally absent in the present case. When the circumstances or the circumstantial evidence is the only material on the basis of which a conviction is to be recorded, then the circumstantial evidence and the circumstances brought on record by the prosecution should consist a chain of circumstances which go to establish commission of the offence.

In the case of **Raja alias Rajinder v. State of Haryana**, (2015) 11 SCC 43, and again in the case of **Kirti Pal & Ors. v. State of West Bengal & Ors.**, (2015) 11 SCC 178, the principles of law laid down for conviction on the basis of circumstantial evidence have been discussed and the principle laid down in the case of **Raja alias Rajinder** (supra) reads as under:-

“10. As the factual matrix would show, the case of the prosecution entirely hinges on circumstantial evidence. When a case rests on circumstantial evidence, the Court has to be satisfied that:



“ (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

[See *Padala Veera Reddy v. State of A.P.* : 1989 Supp (2) SCC 706]

11. In *Balwinder Singh v. State of Punjab* : 1995 Supp (4) SCC 259, it has been laid down that:

“4....the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally



inconsistent with his innocence. In a case based on circumstantial evidence, the court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, howsoever strong they may be, to take the place of proof.”

12. From the aforesaid it is clear as day that the Court is required to evaluate the circumstantial evidence to see that the chain of events have been established clearly and completely to rule out any reasonable likelihood of the innocence of the accused. Needless to say whether the chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted [See Ujjagar Singh v. State of Punjab : (2007) 13 SCC 90, at page 98 para 14].”

If the aforesaid principle is made applicable in the present case, we are of the considered view that the circumstances are not sufficient enough to establish the claim of the prosecution and it is not appropriate desirable or prudent enough in the backdrop of the evidence that has come on record to record conviction on such evidence.

In view of the above, we have no hesitation in holding that in this case, prosecution has failed to prove its case and it is a fit case



where conviction of the appellants cannot be upheld and they should be acquitted of the charges levelled against them.

Accordingly, the appeal is allowed and the appellants are acquitted of the charges. They are directed to be set free after discharging of their bail bonds.

**(Rajendra Menon, CJ)**

**(Anil Kumar Upadhyay, J)**

Sunil/-

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