

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.225 of 1994

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Naresh Mandal, son of Late Daulat Mandal, resident of Village- Chutia, P.S.
Banka, Dist. Banka

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Surendra Kumar Singh, Advocate

Mr. Arjun Prasad No. 1, Advocate

Mr. Bipin Kumar, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, 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 : 11-11-2017

The sole appellant herein Naresh Mandal



challenges his conviction for an offence under Section 302 read with Sections 376 and 201 I.P.C. and sentencing him to undergo life imprisonment, R.I. for 10 years and R.I. for seven years respectively ordered vide judgment dated 18/23rd of March, 1994 in Sessions Trial No. 81 of 1985/116 of 1989 by the 1st Additional Sessions Judge, Bhagalpur.

According to the case of the prosecution, P.W. 12 the informant Ajjo Ram is Bhoulidar of the accused Naresh Mandal. He had grown paddy crop on the Bhouli land of accused Naresh Mandal. On 27.11.1983 the informant was harvesting the paddy crop in the land of the accused along with P.W. 9 Sakuna Devi, P.W. 13 Mahendra Ram, the victim namely the prosecutrix and one Maharani Devi @ Annu Devi, since deceased, the victim's mother. After harvesting the paddy crop on the field the persons who were carrying out the harvesting made bundles of the paddy and it was being carried to the house of the appellant Naresh Mandal and Stacked there. It is said that in the said process the prosecutrix, a 10 year old girl, was also helping in the harvesting. She took one bundle of paddy at about 3:00 P.M. from the field and went to the house of the accused Naresh Mandal but she did not come back. In the meanwhile P.W. 9 Sakuna Devi and Maharani Devi went to the house of the



accused Naresh Mandal and saw the bundle carried by the prosecutrix lying there. She enquired from the accused the whereabouts of the prosecutrix and the appellant informed her that after keeping the bundle she has left. However, when the child was not found, the informant and others started searching for her but she could not be located. In the meanwhile, the informant along with others again came to the house of Naresh Mandal and it is said that the informant heard alarm being raised by the victim and sound coming from the house of the appellant. The persons present there requested the appellant to permit them to search the house. The appellant put a condition that if each one of them executes a bond of Rs. 2,000/- he would permit them to search the house otherwise they should go away. It is said that Naresh Mandal was a powerful person and the informant and others were poor Harizans and, therefore, they went away. They could not find the prosecutrix, in the morning on the subsequent day i.e. on 29.11.1983 the dead body of the prosecutrix was found in one Tarni of the area. First Information Report was lodged and the prosecution was initiated. Based on the evidence and material that came on record, the accused has been convicted.

Learned counsel for the appellant took us through



the statement of the 13 witnesses who have been examined, the fardbeyan and the statement of the doctor who examined the prosecutrix and points out that except for the circumstantial evidence only to the effect that the victim prosecutrix had gone to the house of the accused to deposit the bundle, there is no evidence of last seen or any material incriminating in nature to implicate the appellant with the commission of the offence. Placing reliance on the judgments in the case of **Shyamal Saha and another Vs. State of West Bengal- A.I.R. 2014 Supreme Court 3701, Sangili alias Sanganathan Vs. State of Tamil Nadu- AIR 2014 Supreme Court 3756, State of Himachal Pradesh Vs. Raj Kumar- AIR 2014 Supreme Court 1929, Krishnan alias Ramasamy & others Vs. State of Tamil Nadu- AIR 2014 Supreme Court 2548, Vijay Shankar Vs. State of Haryana- AIR 2015 Supreme Court 3686 and Naresh Kumar alias Nitu Vs. State of Himachal Pradesh- 2017 (6) Supreme 263** learned counsel argues that the circumstances in the present case are not complete. Chain of circumstances, required to complete the link, is not proved by the prosecution and, therefore, based on the aforesaid evidence the prosecution is unsustainable.

On the contrary, learned counsel for the State



argued that the conduct of the appellant and the evidence that has come on record proves beyond doubt that the prosecutrix did go to the house of the appellant and thereafter her whereabouts were not known. The conduct of the appellant in preventing search of the house and putting forth with various conditions for search itself makes the case of the prosecution strong. He refers to the statement of P.W. 13 who is the victim's father, the medical evidence that has come on record and the statement of P.W. 12 the first informant who clearly say that they heard the sound of help when they visited the house of the appellant but the appellant did not permit search of his house.

Learned counsel for the appellant argued that along with P.W. 12 and P.W. 13 P.W. 2 Bacchu Ram P.W. 5 Suresh Ram and P.W. 8 Yashoda Devi were also present along with many other persons but these three persons did not support the case of the prosecution with regard to the victim's cry for help coming out from the house of the appellant when they had gone there.

We have heard learned counsel for the parties at length and we have also taken note of the totality of the facts and circumstances that have come on record. The learned court below has taken note of the dominant position of the appellant



and the fact that the victim's family and all others are Harizans. From the evidence that has come on record and on the appellant's own admission, it is clear that the prosecutrix was working in the field and she had gone to the house of the appellant to deposit the bundle of paddy after harvesting. Her going to the said place apart from the admission of the appellant is proved from the statement of P.W. 9 Sakuna Devi and Maharani Devi who have identified the bundle being there. After deposit of the bundle in the house of the appellant the prosecutrix has vanished. She has not come back to the paddy field where the others were working and none of the witnesses like P.W. 9 Sakuna Devi speak about their seeing the victim when they were going to deposit the bundle of paddy carried by them to the house of Naresh Mandal.

On the contrary, if we analyze the fardbeyan recorded by P.W. 12 it is seen that when he along with P.W. 13 P.W. 2, P.W. 5 and P.W. 8 were searching the child and when they went to the house of the appellant P.W. 12 specifically states that he heard the cry of the victim calling her Dada and Dadi for help. He has specifically stated that the cry for help was coming from inside the house. In the fardbeyan it is further stated that when Naresh Mandal was requested to permit them



to search the house he put a condition that permission would be granted if a Muchalaka (bond) of Rs. 2,000/- is given by each person who want to go inside the house. It is stated in the fardbeyan that we are poor Harizan people, we were scared and left the place in search of the child. This information recorded in the fardbeyan is supported by P.W. 12 himself in his evidence before the Court and identical submissions are made by P.W. 13 Mahendra Ram father of the victim. In Paragraph 2 of his examination in chief he specifically states about hearing the cry of his child coming from the house of the appellant and the condition of submitting bond of Rs. 2,000/- put forth by the appellant. Even though P.W. 2 Bacchu Ram, P.W. 5 Suresh Ram and P.W. 8 Yashoda Devi were also present at that point of time and they do speak about the condition of Rs. 2,000/- as bond being put forth by the appellant for making a search of the house.

Learned counsel for the appellant had vehemently argued that these three witnesses i.e. P.W. 2, P.W. 5 and P.W. 8 do not say anything about the cry of the victim coming from the house. In our considered view, this omission cannot be a reason for rejecting the evidence that has come on record in this regard from the statement of P.W. 12 and P.W. 13, particularly when in



the fardbeyan which was recorded by the informant P.W. 12 himself on the next day such a statement has been recorded. At this point of time a question arises as to why and it was the case of the appellant before us also that if the appellant did not permit search of the house or if the informant and others had any complaint in this regard, they should have made a commotion or at least made a complaint to the police. However, this issue has been addressed by the trial court itself in paragraph 18 of the judgment. P.W. 12 and P.W. 13 and other witnesses do say that all these witnesses had gone to the Police Station but they met the Munsif and the Officer in Charge was not available and, therefore, they again went on the subsequent day. In Paragraph 18, the learned trial court has mentioned this fact by holding that many of the witnesses particularly P.W. 12 and P.W. 13 do say that they went to the police but on the subsequent day on Monday but their complaint was not attended to. It was only attended to after recovery of the dead body. When they wanted to make a complaint about missing of the girl, it is said that it was not recorded. In the facts and circumstances of the case, we are of the considered view that the chain of circumstances have been established. Going of the victim to the appellant's house is established and there is



nothing to disbelieve the statement made by P.W. 12 in his fardbeyan and further in the Court which is supported by P.W. 13 which indicates that the victim was present in the house of the appellant when the father of the victim and others had gone to take her and they heard cry for help coming from his house. We see no reason to disbelieve this part of the prosecution story merely because there is an omission on the part of the P.W. 2, P.W. 5 and P.W. 8 in making a specific statement in this regard. There is nothing as to why the statement made by P.W. 12 and P.W. 13 and the statement of P.W. 12 in the fardbeyan in this regard should be disbelieved. If that be so, the circumstances are strongly pointing out towards the guilt of the appellant and if we analyze the same in the backdrop of the medical report that has come on record, it is seen that the deceased victim's body was found to be having swelling on the private part and definite opinion could not be given due to decomposition of the body having been in the water for more than 36 hours.

In our considered view, the judgments relied upon by learned counsel for the appellant cannot be made applicable in the present case. This is a case where evidence available indicates that the prosecutrix had gone to the house of the appellant thereafter she was not seen and her presence in the



house of the appellant subsequent thereto is also established by the prosecution. This, in our considered view, is sufficient enough to complete the chain of circumstances and approve the conviction recorded by the trial court.

Accordingly, we find no reason to allow this appeal. The appeal is dismissed. Bail bonds of the appellant be cancelled. He be arrested forthwith and sent back to jail for undergoing the remaining period of the sentence.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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