

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.919 of 2011

Against the judgment of conviction and order of sentence dated 22.12.2003, passed by the learned Additional Sessions Judge-cum FTC 3, East Champaran at Bettiah, in Sessions Trial No. 76 of 1999, arising out of Chanpatia Police station Case No. 49 of 1998.

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Rajendra Prasad Patwa son of Late Asharfi Lal Patwa, village Chanpatia bazaar, Police Station Chanpatia, District Bettiah

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : None

Amicus curiae Ms. Anukriti Jaipuriyar, advocate

For the Respondent : Mr. Ashwini Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARUN KUMAR)

Date: 11-05-2017

The sole appellant has been convicted under sections 302/201 of the Indian Penal Code (herein after referred to as ‘the IPC’) vide judgment dated 22.12.2003, passed by the Addl. Sessions Judge-cum-Fast Track Court No.3, West Champaran in Bettiah in Sessions Trial No. 76 of 1999, arising out of Chanpatia Police station Case No. 49 of 1998. For the offence under section 302 IPC, he has been sentenced to undergo RI for life, whereas



for offence under section 201 IPC, the appellant has been sentenced to undergo RI for three years. Both the sentences were directed to have run concurrently.

2. The prosecution's case, as made out in the statement of Ravindra Prasad, aged about 45 years, son of Late Hiralal Sah of village Chanpatia bazaar, Police Station Chanpatia, District West Champaran, recorded by Sub-inspector S.N.Singh, officer-in-charge of Chanpatia Police Station on 3.4.1998 at 11.45 PM, at the varanda of Jamuna Prasad, Chanpatia bazaar, in short, is as follows:-

(a) The informant stated that on 3.4.1998 his four years old son Shrawan Kumar had gone to play near Durga Mandir. However, when he did not see him at 3 PM, he along with other associates began hectic search and even made announcement on loudspeaker in the muhalla regarding missing of his son.

(b) In course of search at around 8.30 PM, one Neeraj Kumar informed him that his son is sleeping in the varanda of Jamuna Prasad. Thereafter, the informant reached there and found his son lying dead in the varanda of Jamuna Prasad. White colour bubble was seen on his mouth. There were injuries on his head, face and nose caused by hammer.

(c) The informant further stated that though a large number



of villagers had gathered in the veranda of Yamuna Prasad, but no one from the appellant's house, which was situated just south to the house of Jamuna Prasad, was present there. Thereafter, they got opened the doors of the appellant's house, where they found bed wet with urine like substance. In course of search, the blue colour wet Jacket of his son was found in the abandoned courtyard of one Saral Mali, adjacent to south wall of the appellant.

(d) Informant suspected the hands of the appellant and his daughter Dolly in the killing of his son, as on earlier occasions families of informant and appellant had quarreled on some issues.

3. On basis of the FIR, a case was registered under sections 302/201 IPC. Police, in course of investigation, prepared inquest report and took further statement of informant as well as the statement of villagers under section 161 of the Cr.P.C. Police also seized the Jacket in presence of PW 3 Mahaveer Prasad and PW 7 Deepak Kumar. Police also obtained post mortem report preferred by PW 5 Dr. Sunil Kumar. Finding the case to be true against the appellant and his daughter Dolly Kumari, police submitted charge sheet under sections 302/201 IPC. On enquiry, accused Dolly Kumari was found to be minor and her case was separated and transferred to the Juvenile Justice Board (herein after referred to



‘the JJB’) for enquiry and trial. On receipt of charge sheet, learned Magistrate committed the case to the court of sessions for trial. Charges were framed under sections 302 and 201 IPC to which the appellant claimed to be tried.

4. The prosecution altogether examined 7 witnesses. PW 1 is Ramesh Prasad s/o Jamuna Prasad, from whose veranda the dead body of 4 years old son of informant was lying dead. PW 2 is Pradeep Kumar, who is witness to the inquest report. PW 3 Mahaveer Prasad is cousin of Jamuna Prasad and witness to the seizure list. PW 4 Prabhawati Devi is mother of the deceased boy. PW 5 is Dr. Sunil Kumar, a Medical officer of the Primary Health Center, Chanpatia, who conducted post mortem of the deceased. PW 6 Rabindra Prasad is the father of the deceased boy. He is the informant of the case. PW 7 Deepak Kumar is the witness to the seizure list. PW 8 Md. Ali is a formal witness.

5. The trial court framed charges under the same sections to which the accused pleaded not guilty and claimed to be tried. Case of the appellant, in his statement under section 313 of the Code of Criminal Procedure (in short ‘the Cr.P.C.’), is of false implication on account of previous altercation between appellant’s daughter Dolly and informant’s wife. However, the defence did not produce any witness or documentary evidence in



support of his case.

6. Ms. Anukriti Jaipuriyar, learned *Amicus curiae* submits that from the facts and circumstances of the case as well as from going through the materials on record, it is clear that the instant case is based on the circumstantial evidence, as no one has seen the accused persons committing gruesome murder of 4 years son of the informant nor any one has come to state that he or she last saw the accused persons with the boy before his dead body was recovered from the veranda of Yamuna Prasad. Besides this, no incriminating material was even recovered from the possession of the appellant or his house, pointing his guilt to the commission of offence. Furthermore, there is recovery of wet jacket of the deceased from the abandoned courtyard of one Saral Mali, adjacent south wall of the appellant, and not from the house of the appellant. Furthermore, the bed wet with urine like substance found in the appellant's house, cannot connect the inhabitant of the house with the murder of informant's son as there were small children in the house. Besides this, PW 1 Ramesh Prasad as well as PW 6, Ravindra Prasad (the informant) in their cross examination admitted that they have not seen the appellant committing the murder of the little boy. The informant, father of the deceased, had raised the needle of suspicion against the



appellant and his daughter Dolly Kumari because of previous enmity between them which at best would be surmises and conjectures in absence of cogent evidence. Even in the FIR, the informant has stated that from before, his wife and Dolly Kumari had some altercations on the issue of stealing utensils by the latter from the house of Jamuna Prasad. The appellant is in custody for nineteen (19) years.

7. Mr. Ashwini Kumar Sinha, learned Additional Public Prosecutor appearing for the State, submits that the incident is very gruesome in which a four year boy was picked up while playing and then killed by inflicting several injuries on his face and nose by hard and blunt substance. He further submits that the case is of circumstantial evidence, pointing the guilt, towards the appellant. He submits that a large number of villagers gathered at the veranda of Jamuna Prasad, where the dead body was lying on hearing the news, but none came from the appellant's house. Rather the house of the appellant was shut from inside. He further submits that when his house was opened, a bed with urine like smell was found in his house, though there was no small child in his house at that time. Further, a wet blue jacket of deceased was recovered from adjacent abandoned courtyard of Saral Mali. He submits that the appellant and his daughter have apparently



committed murder of the child, because of previous enmity.

8. Heard learned Amicus curiae, the state and perused the materials on record.

9. From the evidence on record, the following facts comes to the light:-

1. 4 years old son of the informant, namely, Shrawan Kumar who had come out to play on 3.4.1998 was found lying dead in the varanda of one Jamuna Prasad, neighbourer of the appellant.
2. Jacket worn by Shrawan Kumar, on the relevant day, was found from the abandoned house of one Saral Mali, which had common broken boundary with the appellant. There was some verbal duel between the appellant's daughter Dolly and the informant's wife Prabhawati Devi (PW 4). Some urine mark presumably that of a small child, was found on the bed of Dolly, though there was no small child in the house.
3. All, except the appellant, on hearing Hulla, came near the varanda of Jamuna Prasad where the dead body of the boy was found.

10. In our view, the circumstances emerging from the evidence do not form a complete chain pointing to the guilt of



the appellant and the appellant alone. There is deposition of PW 4 (Prabhawati Devi), wife of the informant, that the appellant had six daughters and two sons including 1 ½ years old child. In such a situation, urine mark on the bed of appellant's daughter Dolly would not be very relevant. Furthermore, the boy was found lying in the veranda of another person, namely, Jamuna Prasad, who has not been examined. Two witnesses, namely, PW 3 Mahaveer Prasad and PW 7 Deepak Kumar have signed the seizure of Jacket which was recovered from the courtyard of Saral Mali. Furthermore, there is no evidence that anyone has seen the appellant carrying the boy. This apart, there is no other incriminating material against him.

11. Situated thus and in view of the above discussions, we are of the considered view that the prosecution has not been able to bring home the charge under sections 302/201 IPC against the appellant, beyond all reasonable doubt. The appellant, who is in custody for nineteen (19) years is acquitted of the charges and set at liberty, if not wanted in any other case. In the result, the appeal is allowed.

12. Let the first page and the last of the judgment be handed over to the learned *Amicus curiae*, who presented the case before the court very laboriously, to facilitate payment of



prescribed fee from the Patna High Court Legal Services Committee.

(Arun Kumar, J)

(Samarendra Pratap Singh,J)

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