

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.89 of 1995

Against judgment and order dated 5th day of May, 1995 passed by the learned Sessions Judge, Saharsa, in Sessions Case No. 99 of 1987.

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Amila Devi, wife of Sattan Roy, resident of Village Finglas, Police Station Bhojpur, District Saharsa now Supaul

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mrs. Veena Kumari Jaiswal

For the Respondent/s : Learned A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

Date: 29-03-2018

The sole appellant in this appeal has challenged her conviction under Section 302 of the Indian Penal Code by the learned Sessions Judge, Saharsa (hereinafter referred to as the 'trial court') vide judgment dated 5th of May, 1995 in Sessions Case No. 99 of 1987 arising out of Raghapur P.S. Case No. 24 of 1987. By the impugned judgment, the learned trial court while finding her guilty for the offence under Section 302 IPC, has sentenced her to undergo



rigorous imprisonment for life for committing the murder of the deceased Rajendra Roy.

While assailing the impugned judgment of the trial court learned counsel representing the appellant submits that the impugned judgment is based on the sole testimony of a child witness, namely, Uma Kumari (PW 5) who happened to be the daughter of the informant (PW 1) and at the time of her deposition in the trial court she was only eight years old. Therefore, if related back her age to the date of occurrence, i.e. on 13.05.1987, she would be only of one year at the time of alleged occurrence. According to learned counsel, conviction of the sole appellant based on the sole testimony of a child witness who was hardly aged about one year at the time of alleged occurrence would not be safe and the conviction is liable to be set aside on this ground alone.

Learned Senior Counsel has placed before us the fardbeyan of Kapal Roy the informant (PW 1). The prosecution case is that on 13.05.1987 while the informant and his wife Surji Devi were working in the field leaving behind their son Rajendra Roy aged about 6 years and Uma Kumari aged about four years (daughter) in their house, they got an information at about 11 A.M. that Amila Devi, wife of Sattan Roy, had killed his son Rajendra Roy and had thrown the dead body in the street. The informant and his wife



claimed that they reached their house when they found that Amila Devi (the sole appellant) along with her two children was fleeing away. At this stage, the informant also claims that when he asked his daughter Uma Kumari (PW 5), she disclosed that Amila Devi (the appellant) had killed her brother. The appellant found the dead body in the street passing in between the house of the informant and said Amila Devi (the appellant). There were black marks around the neck of the dead body and blood were oozing out from the mouth and nose, the testicles of victim boy had got blackened showing indication of some injuries. The informant claims that Amila Devi who is wife of his *mousera* brother Sattan Roy resides in the same premises who was having inimical terms. It is also alleged that the appellant Amila Devi was threatening the wife of the informant that she would kill the boy and in fact she had killed the boy because of the enmity.

After investigation the police submitted a charge-sheet, cognizance was taken and the records were committed to the court of sessions. In course of trial, prosecution examined altogether 7 witnesses. PW 1 is the informant himself, PW 2 is one Uma Devi (neighbour), who was investigated by police, but in course of trial she was declared hostile and she did not support the case of the prosecution. PW 3 Lakhan Rai was tendered by prosecution. PW 4 Surji Devi is the wife of the informant who had supported the



prosecution version but neither PW 1 nor PW 3 is eye-witness. PW 5 is Uma Kumari aged about eight years shown while recording her statement under Section 313 Cr.P.C. PW 5 is said to be an eye-witness but was not examined by police, she was brought in the dock before the trial court for the first time showing her an eye-witness. PW 6 is Indra Kant Thakur, Officer-in-charge of Kotwali Police Station who had been posted at Raghapur Police Station on 13.05.1987 and had occasion to investigate the case. He has in his deposition stated that he had recorded the statement of the prosecution witnesses Surji Devi, Uma Kumari and Koma Kumari but in the same breath he has also stated that he had not recorded the statement of Prosecution Witness Kamleshwar Rai and Uma Devi. PW 7 is one Mahendra Prasad Yadav who had conducted the post-mortem on the dead body of the victim boy. He has proved the report as Ext. 5.

Learned Senior Counsel representing the appellant submits that it is a case of no evidence. He has drawn our attention towards the statements of PW 5 Uma Kumari who has been shown aged about eight years on the date of recording her statement in course of trial. Uma Kumari, PW 5, has categorically stated in paragraph-10 of her deposition as under:-

“मैं पहले दारोगा, जमादार या पुलिस के सामने कोई बयान नहीं दी है।

मैं यहाँ कोर्ट में पहले पहल गवाही दे रही हूँ।”



It is pointed out that if the statement of PW 5 is read together with the statement of Investigating Officer PW 6, it would be crystal clear that the Investigating Officer had investigated Uma Devi (PW 2) and had not investigated Uma Kumari (PW 5). There is some confusion in recording of name as Uma Kumari and Uma Devi in paragraph-4 of the deposition of the Investigating Officer, but a combined and truthful reading of the deposition of PW 5 and PW 6 would not leave any doubt that Uma Kumari (PW 5) was never investigated by police and she was brought in the trial court for the first time to depose. Learned Sr. Counsel submits that it is a case of false implication and the appellant has been convicted by the learned trial court without there being any evidence much less any clinching evidence beyond all reasonable doubts. According to him, the learned trial court has attached much evidentiary value to the deposition of the child witness (PW 5) and has assumed certain facts in order to convict the appellant.

Learned A.P.P. representing the State even though initially attempted to point out from the deposition of PW 5 that she is an eye-witness to the occurrence and her testimony should not be rejected but on the face of the statement of PW 5 that she was never interrogated or investigated by police in course of investigation and that she had come in the court to depose for the first time, learned



counsel is unable to satisfy this Court that in such circumstance reliance on the evidence of PW 5 alone for conviction of the appellant would be safe and proper.

Having considered the submissions of the learned Sr. Counsel representing the appellant as also the learned A.P.P. for the State, we perused the impugned judgment and records of the trial court. On a closer scrutiny, we find that there is no eye-witness to the occurrence as alleged and on the sole testimony of PW 5 Uma Kumari who was aged about eight years at the time of making statement in course of trial it would not be safe, just and proper to convict the appellant and sentence her to undergo rigorous imprisonment for life. PW 5 has herself stated that she was not interrogated or investigated by police on any earlier occasion. If the statement made by PW 1 that his daughter Uma Kumari (PW 5) was aged about 4 years at the time of alleged occurrence and had disclosed that the appellant had killed the victim boy was correct, then also it cannot be believed and worth relying in absence of any suggestion to the I.O. as to why PW 5 was not interrogated or investigated by I.O. (PW 6) in course of recording of statement under Section 161, CrPC.

We are of the view that if Uma Kumari (PW 5) who has been described as four years old in the fardbeyan, had been an eye-witness and she had disclosed the name of this appellant and was in a



position to make statement as to manner of occurrence, her non-examination or interrogation by police would prove fatal to the prosecution. In our considered opinion, when the Investigating Officer has also come out with a statement that he had not interrogated or investigated Kapileshwar Rai and Uma Kumari (since wrongly mentioned as Uma Devi) his statement coupled with the statement of PW 5 would create a reasonable doubt in the mind of this Court as to the quality and reliability of evidence, the evidentiary value of the evidence of P.W. 5 in the present case cannot be taken as clinching and beyond all reasonable doubt, therefore, in such circumstance this Court would come to a conclusion that it would not be safe, prudent and proper to convict the appellant on the sole testimony of the child witness (PW 5). In a case under Section 302 IPC for purpose of conviction of an accused that too where prior enmity is admitted by the informant himself in the fardbeyan, the prosecution has not been able to bring home the guilt of the appellant beyond all reasonable doubts.

In the facts of the present case and the nature of evidence which are available on record, we are unable to sustain the judgment of the learned trial court. The impugned judgment dated 5th of May, 1995 passed in Sessions Case No. 99 of 1987 by the learned Sessions Judge, Saharsa is hereby set aside and the appellant is acquitted from



the charge as also is discharged from her liability of the bail bonds.

The appeal is allowed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

mr.l./-

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