

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.187 of 1995

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1. Devendra Rai son of Dharmdeo Rai
 2. Lal Baboo Rai son of Dharmdeo Rai
 3. Dharmdeo Rai son of Late Mira Rai
 4. Luxaman Rai, son of Late Mira Rai
 5. Rajan Rai son of Luxaman Rai
 6. Sawan Rai, son of Luxaman Rai
 7. Jogendra Rai, son of Luxaman Rai
 8. Maha Devi, wife of Nageshwar Rai
 9. Surjan Devi wife of Dharmdeo Rai

1 to 7 and 9 are residents of village- Rampur Shyamchand, P.S.- Raghapur,
District- Vaishali, appellant no. 8 is resident of village- Bishunpur, P.S.-
Bidupur, District- Vaishali..... Appellants

Versus

The State of Bihar Respondent

Appearance :

For the Appellants : Ms. Sweta Raj (Amicus Curiae), Advocate
For the Respondent : Ms. S. B. Verma, APP

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 05-07-2018

Altogether 9 life convicts are in appeal before us for setting aside the judgment and sentence dated 15th and 17th July, 1995 respectively passed by Shri Mithilesh Kumar Singh, 3rd Additional Sessions Judge, Vaishali at Hajipur (hereinafter ‘the Trial Court’) in Sessions Trial No. 80 of 1988. By the impugned judgment the learned Trial Court has been pleased to hold and declare that the charges under Section 302/34 of the Indian Penal Code as also under Section 201 of the Indian Penal Code have been successfully proved against the appellants herein beyond all



reasonable doubts and therefore, they have been convicted for those offences and sentenced accordingly, to undergo rigorous imprisonment for life under Sections 302/34 of the Indian Penal Code. They have been further sentenced to undergo rigorous imprisonment for four years each under Section 201 of the Indian Penal Code. The sentences are to run concurrently.

2. The prosecution case is based on the fardbeyan of one Binda Rai (PW 7) who alleged that on 10.05.1986 at about 5:00 p.m. he was informed by one Shyambahadur Rai that his daughter Kanti Devi was murdered by his son-in-law and other family members of the family of the son-in-law at about 12:00 a.m. on the same day and that they were also trying to dispose of the dead body. It is stated that the informant rushed to the place of occurrence in village Rampur along with his co-villagers namely, Bageshwar Rai, (PW 1), Laldeo Rai (not examined), Ramnaresh Rai (PW 4), Saryug Rai (PW 2) and Ramprit Rai (not examined). On reaching the place of occurrence, he found the child of the deceased and learnt from the villagers that the daughter of the informant was murdered by the accused persons and they have also concealed her dead body. In his fardbeyan PW 7 further stated that in the meantime the Assistant Sub-Inspector of Police, Raghapur Police Station came there along with police force and



made hectic search for the dead body but could not trace. The informant alleged that expectedly the dead body was thrown somewhere in river Ganges. The deceased was married only four years ago with Devendra Rai (appellant no. 1) the son of accused Dharmdeo Rai. After marriage, the girl had gone to her in-laws house and returned from there only last year. It was also alleged that the informant's son-in-law, Samadhi i.e. father-in-law of the daughter of the informant were demanding watch and Radio from the informant but the informant was unable to give those things due to paucity of money and deferred the same to give after some time.

It is further alleged that the informant occasionally visited the house of his daughter for the purpose of "Rukshadi" but the son-in-law was insisting for fulfillment of the demand and told the informant that they would not allow his daughter to go to her parent's house unless his demands are fulfilled. According to the informant, he promised to fulfill the demand at the time of marriage of his son, as it was fixed on 17.05.1986, but when the informant went to his daughter's house on 02.05.1986 for "Rukshadi" the father-in-law and son-in-law both demanded the said articles otherwise they would not allow the informant's daughter to go. The informant was, allegedly, also not allowed to



meet his daughter's son aged about 1 and ½ years. A panchayati was convened in which Mukhiya of the village, which is the place of occurrence, and some other persons participated. The Panches decided that the girl will go to her parent's house on 12.05.1986 and the informant would give the alleged articles to his son-in-law. It was agreed by both the parties and the informant went to his village home Jethuli. The occurrence took place on 10.05.1986. Fardbeyan of the informant was exhibited as Ext. 4 and the formal FIR arising out of the same being Raghapur P.S. Case No. 28 of 1986 dated 10.05.1986 was exhibited as Ext. 3. After investigation the Police submitted chargesheet, cognizance was taken and the records were committed to the court of sessions for trial. Charges were framed against the accused persons, as stated above, but they pleaded not guilty and claimed to be tried.

3. In course of trial, prosecution has examined altogether 8 witnesses to substantiate the charges. PW 7 is the informant, PW 2 and PW 4 are the brothers of the informant whereas PW 1 is a co-villager of the informant. PW 3 is a resident of neighbouring village of the place of occurrence who had informed the informant (PW 7) about the occurrence. Bhubneshwar Prasad, Mukhiya (PW 5) and Rambaboo Rai (PW 6) are both residents of village of the place of occurrence and they



had held the panchayati. Thakur Bcchanand Prasad (PW 8) is a formal witness who has proved the fardbeyan (Ext. 3), FIR (Ext. 4) and chargesheet (Ext. 5).

4. From the evidences of prosecution witnesses, the Trial Court came to a conclusion that the victim girl was married to the accused Devendra Rai about four years before the alleged occurrence. It was proved in course of trial that the victim was living in the house of the accused persons at the time of alleged occurrence i.e. on 10.05.1986. The panchayati between the parties for “Rukshadi” of the victim girl is said to have been proved and it was also proved by the evidences of PW 1 to PW 4 and PW 7 that all the accused persons were found absent from their house when these prosecution witnesses visited the house of the accused persons.

5. The learned Trial Court recorded that there is no eye witness or direct evidence on the point of the death of the victim but circumstantial evidences are there against the accused persons and it proves that there was no good relation between the parties for which a panchayati was held about a week before the occurrence in which it was agreed that the victim would go to her parent's house. In course of trial the defence suggested that she died of natural death but the learned Trial Court held that if it was so then,



there was no need of absconding to the accused persons from their house. The learned Trial Court also took a view that there is no evidence or explanation whatsoever by the defence that she died of natural death for any ailment. This, according to the learned Trial Court, has not been supported by any co-villagers of the accused persons. The plea of the defence that the Investigating Officer in this case has not been examined and therefore, prejudice will be caused to the defence of the accused, therefore, it will prove fatal to the prosecution has not been accepted by the learned Trial Court. The learned Trial Court held that the non-examination of Investigating Officer is not fatal to the prosecution inasmuch as the Investigating Officer has not played any role except recording of statement of witnesses. Further plea of the defence that there are vital contradictions and discrepancies in the evidences of prosecution witnesses and non-examination of all other Panches will also go against the prosecution had not been accepted by the learned Trial Court. It appears that the accused persons were also charged under Section 3 and 4 of Dowry Prohibition Act. The learned Trial Court held that there was no sanction of the State Government for charging the accused persons under Section 4 of Dowry Prohibition Act and therefore, in absence of sanction of the



Government, the accused persons-appellants have been acquitted from the charges under Sections 3 and 4 of Dowry Prohibition Act.

6. While assailing the judgment of the learned Trial Court, learned Advocate (Amicus Curiae) Ms. Sweta Raj submitted before us that it is a case of no evidence. According to learned counsel, the learned Trial Court had itself recorded that there is no eye witness to the occurrence and it is submitted that if the death of the victim has taken place inside the house of her father-in-law, in the village of the place of occurrence, then, the villagers of the place of occurrence would have certainly come out saying that they had occasion to either see the dead body of the victim or to know about the place of concealment of the dead body. Learned Amicus Curiae suggests that the whole case is based on circumstantial evidence. In this connection, learned counsel submits that non-examination of the Investigating Officer has proved fatal to the prosecution because it was the Investigating Officer who was the best witness to say about the allegations made by the informant that he along with the Police force had gone in hectic search of the dead body, otherwise this Court can take a view that the informant has only come out with a false story that he along with the co-villagers and the Police party had gone in search of the dead body. It is submitted that there is a vital



contradiction in the statement of the prosecution witnesses. In this connection, attention of this Court has been drawn towards the deposition of Rambaboo Rai (PW 6) who is one of the persons participated in the panchayati. In course of his cross-examination, this witness has stated that he was not investigated by the Police and that the wife of the appellant no. 1 had died due to heart attack and in her cremation the informant Binda Rai was also present. Learned counsel submits that PW 6 is non-else but a prosecution witness and it is the prosecution who has taken risk to produce PW 6 as an independent witness.

7. Learned counsel further points out that Shyambhadur Rai (PW 3), who is a resident of the neighbouring village of the place of occurrence and is said to be the person who had informed the informant about the occurrence, in course of his deposition stated that he was told by one Mahendra Rai (not examined) that the daughter of the informant has been murdered by Dharmdev Rai and his family members and he advised PW 3 to inform this fact to the informant (PW 7). This witness has stated in paragraph 7 of his deposition that he had not inquired about the information given by said Mahendra Rai and he had, in fact, not inquired about this fact till date. He has further stated that his statement was recorded by the Police at the Police Station after 2- 2 and ½ months but he did



not remember who had taken him to the Police Station. In paragraph 8 of his deposition he has stated that he had not made statement that the Police had searched but the dead body was not found. In paragraph 10 of his deposition he has stated that when the Police reached in the village of the place of occurrence there were altogether 100 persons at the place of occurrence but the Police had not recorded statement of anybody on the said date and after that day he had not seen the Police coming in the village. Learned counsel submits that from the statement of PW 3, who is a material witness, itself it appears that his statement was hearsay and he had never verified about the correctness of the information received from Mahendra Rai, moreover, Mahendra Rai who was the person giving information to PW 3 at the first instance has not been examined in course of trial.

8. It is, thus, submitted that the learned trial court has taken a wrong view and the appreciation of the evidences in the present case are not in the light of the judicial pronouncement on the subject. It is submitted that in case of circumstantial evidence, chain of facts must be proved to such an extent that the chain of facts is complete and the only irresistible conclusion arriving from those facts should be that the accused persons have committed the offence. It is submitted that in the present case there is no evidence



that the victim was murdered in the house of her in-laws and further there is no evidence that her dead body was concealed or disposed of with an intention to get away with the evidence of murder.

9. On the other hand, learned APP representing the State submits that the learned Trial Court has rightly come to a conclusion based on the prosecution evidence which conclusively proved the guilt of the accused-appellants.

10. Having heard learned Amicus Curiae for the appellants and learned APP for the State and also on perusal of the records of the learned Trial Court, we are of the considered view that the entire case is based on hearsay statement of one Mahendra Rai who has not been examined in course of trial. PW 3, who informed the informant (PW 7), has categorically stated that he had not examined or verified the correctness of the information given to him by said Mahendra Rai. The testimony of this witness further states that this witness had gone to Police Station to get recorded his statement after 2-2 and ½ months from the date of alleged occurrence. He has also stated that on the date of occurrence i.e. 10.05.1986 the Police had not recorded the statement of any of the witnesses. In fact, his statements are highly contradictory and conflicting with the prosecution case and



the fact that his statement was recorded by Police after 2-2 and ½ months at Police Station where no other person was there, creates doubt on the veracity of his statements. In this case the Investigating Officer has not been examined. In our opinion, the Investigating Officer would have been a material witness to prove the fact that he had gone to the village of place of occurrence on 10.05.1986 and had made hectic search for the dead body but could not be traced. The case of the informant is that he along with the co-villagers and Police party had gone in search of the dead body on the same day which has been denied by the defence and in fact, one of the prosecution witnesses (PW 6) who is an independent witness has said that the daughter of the informant had heart attack and due to that she died and in her cremation the informant was also present. In the circumstances, non-examination of the Investigating Officer has prejudiced the case of the defence and would prove fatal to the prosecution. We are of the view that the learned Trial Court has not been able to appreciate the prosecution evidences available on the record which are highly contradictory to each other and are not conclusively proving either the murder of the victim or the concealment of dead body.

11. In ultimate analysis of the entire materials, we are unable to sustain the findings of the learned Trial Court. The



impugned judgment of conviction dated 15.07.1995 and sentence dated 17.07.1995 are hereby set aside. The appellants are being given benefit of doubts, they are already on bail, hence, they are discharged from the liabilities of their bail bonds.

12. The appeal is allowed to the extent indicated above.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.07.2018
Transmission Date	19.07.2018

