

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.671 of 2016

Arising Out of PS. Case No.-23 Year-2015 Thana- GAYGHAT District- Muzaffarpur

Sunil Sahani, son of Indal Sahani, resident of village-Loh Bandra, P.S.-
Gayghat, District-Muzaffarpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae
For the Respondent/s : Mr. S.B. Verma, APP

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 06-01-2018

We have heard learned amicus curiae and the State and have perused the records of this case.

This Jail Appeal has been filed assailing the judgment of conviction dated 31.03.2016 and order of sentence dated 5.04.2016 passed by Additional Sessions Judge-XI, Muzaffarpur in Sessions Trial No. 248 of 2015 by which the appellant has been convicted for the offences punishable under Sections 364, 302 and 201 of the Indian Penal Code and has been sentenced to undergo imprisonment for life with a fine of Rs.10000/- under Section 364 IPC and in default of payment of fine, he has been directed to further undergo imprisonment for six months. Further, he has been



sentenced to undergo imprisonment for life under Section 302 IPC with a fine of Rs. 10,000/- and in default of payment of fine, he has been directed to undergo rigorous imprisonment for six months. He has also been sentenced to undergo rigorous imprisonment for three years under Section 201 IPC with a fine of Rs.5,000/- and in default of payment of fine, he has been directed to undergo rigorous imprisonment for three months. However, all the sentences have been ordered to run concurrently.

The prosecution case, as per written report of the informant, who happens to be the mother of the deceased Shivam Kumar @ Raja Babu, is that about four days back, accused Ravindra Thakur and Shashi Thakur came at her house and threatened her by saying that they would destroyed your whole family if you litigate with us. She has further alleged that on 21.02.2015, at around 6.00 P.M., they had sent one Sunil Sahani at her '*Bathan*' who enticed her son and took him somewhere. She alleged that she and her villagers searched her son whole night and when he could not be traced out, she went the police station and informed the police. She further alleged that her son was aged about 11 years old. She further claimed that accused persons Ravindra Thakur and Shashi Thakur, in collusion with the accused Sunil Sahani, kidnapped her son with intention to kill him and she requested before the police



to take legal action against them so that her son could be traced out.

On the basis of aforesaid written report, the police registered Gaighat P.S. Case No. 23/2015 against the appellant including Ravindra Thakur and Shashi Thakur for the offences punishable under Sections 363, 364/34 of the Indian Penal Code. Later on, the dead body of the deceased was recovered and, as such, Section 302 of the Indian Penal Code was also added.

After investigation, the police submitted charge sheet against the appellant only. Thereafter, the Chief Judicial Magistrate, Muzaffarpur had taken cognizance of the offences against the appellant under Sections 364 and 302 of the Indian Penal Code. The case was committed to the court of sessions, where charges were framed, to which, the appellant pleaded not guilty. Thereafter, trial begun.

During trial, the prosecution has examined altogether eleven witnesses in support of its case. P.W.1 is Vijay Kumar, P.W. 2 is Arun Kumar, P.W. 3 is Mantun Thakur, P.W. 4 is Rinki Devi, P.W. 5 is Amresh Kumar Thakur @ Gullu Thakur, P.W. 6 is Ram Babu Thakur, P.W. 7 is Kundan Thakur, P.W. 8 is Ram Tapit Singh, P.W. 9 is Sanjay Kumar Pathak, P.W. 10 is Vijay Kumar Gupta and P.W. 11 is Dr. Vijay Kumar Prasad.



The defence has not examined any witness on its behalf.

The trial court, after hearing learned counsel for the parties and considering the materials available on record came to the conclusion that the prosecution has been able to prove the charges against the appellant and, as such, judgment of conviction and order of sentence was passed against the appellant.

From the prosecution evidence, it appears that P.Ws.1, 2, 3, 4 and 5 are substantive witnesses in the case and they have consistently proved the prosecution case. P.Ws. 6, 7 and 8 are the witnesses of seizure list on the recovery of 'Kudal'. P.W. 9 is the witness of seizure list of Kudal and he has also produced the material (Ext.1) before the court. They have supported the prosecution case. P.W. 10 is the Investigating Officer of the case. He has supported the prosecution case. P.W. 11 is the doctor who had conducted autopsy on the dead boy of the deceased and found ante-mortem injuries on the person of the deceased like abrasion on his left side and right side of neck and he has opined that deceased died due to asphyxia as a result of pressure over neck. Moreover, confessional statement of accused Sunil Sahani is on record in which he admitted that he had killed the deceased by strangulation and upon his statement the dead body was recovered. Apart from above, the admission made by the appellant under Section 313



Cr.P.C. was voluntarily in nature and the same was free from undue influence. The ocular evidence is also supported by the medical evidence.

After hearing the parties and on going through the entire materials on record and after careful scrutiny and evaluation of evidence of the prosecution witnesses, it appears that witnesses examined in the case are much consistent on the point of kidnapping of a boy aged about 11 years, namely, Shivam Kumar @ Raja Babu and recovery of dead body of kidnapped boy and Kudal used in the crime and accused Sunil Sahani confessed his guilt before the police in his confessional statement and at the instance of accused Sunil Sahani, the police recovered the dead body and Kudal from the wheat field of Pramod Rai in the presence of many people and the dead body was identified by his mother, father and uncle after one day of the alleged occurrence after lodging the FIR. There is no contradiction in the evidence of witnesses examined in this case. The evidence led by the prosecution inspire confidence.

It further appears from the statement recorded under Section 313 Cr.P.C. that the appellant has admitted that at his instance, the police recovered the dead body from the wheat field. Apart from



that, he has also admitted that he caused the murder at the instigation of Ravindra Thakur.

Considering the facts and circumstances of the case and also materials on record, it appears that the prosecution has succeeded in proving its case beyond all reasonable doubts and the trial court has rightly convicted the appellant. Thus, no interference is required by this Court in the impugned judgment of conviction and order of sentence.

As a result, this appeal is dismissed.

Mr. Ranbir Singh, Advocate, was appointed to appear on behalf of appellant as Amicus Curiae vide order dated 19.07.2016.

The Legal Services Authority shall make payment to him as per schedule.

(Dr. Ravi Ranjan, J)

(Birendra Kumar, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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