

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.533 of 2015**

Arising Out of PS.Case No. -78 Year- 2002 Thana -BELAGANJ District- GAYA

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1. Sobha Devi, wife of Late Binod Sharma, resident of Village Chainpur, P.S. Belaganj, District Gaya

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Rama Kant Sharma, Sr. Advocate
Mr. Rakesh Kumar Sharma, Advocate
Mr. Laxmi Kant Sharma, Advocate
For the Respondent/s : Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 27-08-2018**

Appellant, Sobha Devi has been found guilty for an offence punishable under Section 201 of the IPC and sentenced to undergo RI for 5 years as well as to pay fine of Rs. 10,000/- in default thereof, to undergo SI for 3 months vide judgment of conviction and order of sentence dated 30.07.2015 passed by 2nd Adhoc Additional District & Sessions Judge, Gaya relating to Sessions Trial No. 57/2012/372A/2003.

2. Md. Husnain (PW 5) gave his Fard-e-beyan on 09.07.2002 at about 5.15 PM disclosing therein that he happens to be teacher at Naglal Agrawal, Middle School, Belaganj. Halima Khatoon aged about 7 years who was studying at Adarsh Children Academy, Belaganj was the daughter of his brother-in-law (Sala) Irfan and was living in a Girls' Hostel running in the house of Chandradip Singh, a retired Headmaster of which Sobha Devi wife of Binod Sharma



happens to be proprietor who also resides in the same hostel along with her family members. Yesterday, i.e. on 08.07.2002 at about 7:00 AM, he left the aforesaid Halima Khatoon at the hostel entrusting to Sobha Devi. Today at about 11:45 AM, one boy namely, Sani Husnain son of Tajammul Husnain came to his school and informed that Halima is not present in the school over which, he has been called upon by the Headmaster. He rushed and then inquired from Sobha Devi who also disclosed that she is also searching her but, could not locate. Then thereafter, he had gone to the place of maternal grand mother of Halima but, failed to locate her. When he returned back therefrom, then he came to know that dead body of a girl is lying in the campus of the hostel whereupon, he rushed and seen assemblage of a large number of persons. Identified the body to be that of Halima Khatoon. He had also seen froth coming out from her mouth as well as blood from her ears. Therefore, he had shown his suspicion against Sobha Devi to have killed Halima in her room and then, threw the dead body in the campus of the hostel.

3. After registration of Belaganj PS Case No. 78/2002, investigation commenced and after concluding the same, charge-sheet was submitted against Sobha Devi and Raushan Kumar for an offence punishable under Sections 302, 201 of the IPC which happens to be the basis of trial. It is further evident that trial of Raushan Kumar has been bifurcated being juvenile while trial



proceeded against the appellant, Sobha Devi and concluded by way of recording verdict of guilt and sentence, subject matter of the instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. However, nothing has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether 8 PWs who are PW-1, Md. Izhar Alam, PW-2, Md. Khowaza, PW-3 Md. Meraj, PW-4, Shah Nawaz, PW-5, Md. Husnain, PW-6, Dr. Arvind Prasad, PW-7, Chandradeo Singh and PW-8, Bipin Kumar as well as had also exhibited Ext-1 Series, signature of respective witnesses over inquest report, Ext-2, Signature of Md. Izhar over Fard-e-beyan, Ext-3, Signature of informant over Fard-e-beyan, Ext-3/1, Fard-e-beyan, Ext-4, Signature of PW-7 over seizure list, Ext-5, Postmortem report, Ext-6, Signature of PW-7 over seizure list, Ext-7, Formal FIR, Ext-8, inquest report, Ext-9, inculpatory extra judicial confessional statement of co-accused, Raushan Kumar. As discussed above, nothing has been adduced in defence.

6. Manifold arguments have been made at the end of learned counsel for the appellant while challenging the judgment impugned. The first and foremost happens to be that the Investigating



Officer has not been examined and so, interest of accused is found highly prejudiced. Had there been examination of Investigating Officer, then in that circumstance (A) the genuine conduct of the appellant would have been exposed, (B) the real place of occurrence would have been shown, (C) status of the witnesses would have been properly identified, (D) was it possible for the appellant to know about the end of occurrence on account of having her presence at the school away from the hostel during the intervening period.

7. Furthermore, it has also been submitted that none of the witnesses have stated that the appellant had tried to remove the evidence of crime nor tried to mislead by way of giving wrong information in order to screen the culprit and that being so, no offence under Section 201 IPC is made out. Further, the plea has been buttressed by citing the case of *NAGENDRA BHAKTA V. EMPEROR* as reported in (*AIR 1934 CAL 144*), *SOU VIJAYA @ BABY V. STATE OF MAHARASHTRA*, (*AIR 2003 SC 3787*) and *PADMINI MAHENDRABHAI GADDA V. STATE OF GUJARAT* as reported in (*2017*) *14 SCC 587*. So submitted that the instant appeal is fit to be allowed.

8. The learned APP strenuously argued that the plea whatsoever raised on behalf of the appellant is not at all found appreciable in the background of the fact that she was custodian of the hostel, victim was entrusted to her, victim was of such age which



needed presence of elders for all practical purpose and in the aforesaid background, missing of victim without any proper activity at her end suggests otherwise than the normal conduct. After all, she happens to be literate, a teacher as well as custodian of the minor girls and so, must have taken recourse to inform the police as soon as the matter came to her knowledge. Moreover, being custodian and further having been entrusted with the custody of the minor girl and further, her presence was within the premises as proprietor of the hostel where deceased Halima was murdered, for that she was the only person to explain as required under Section 106 of the Evidence Act and having failed on that very score, irrespective of the fact that learned lower court had acquitted her for an offence punishable under Section 302/34 IPC, it would not have in the background of the fact that from the postmortem report, Ext-5, it is evident that victim was raped before her death and further, which found duly corroborated by way of presence of ante-mortem injuries. So, not only her conviction and sentence under Section 201 IPC is justifiable rather she should have been convicted for abetting the offence of rape as well as murder of the victim, more particular, in the background of the fact that the brother of the appellant, namely, Raushan Kumar was also residing along with her in the hostel and his involvement was found relating to rape as well as commission of murder of the deceased. So submitted that invoking the power as envisaged under Section 386 CrPC,



appellant be noticed on that very score and then, be adequately punished.

9. PW-6 is the doctor who had conducted postmortem over the dead body of deceased, Halima Khatoon aged about 7 years on 10.07.2012 and found the following:-

- (i) Lacerated wound 1 ¼" x ¼" x muscle deep of left side chick below lower leap.
- (ii) One minial semilullar abrasion of ¼" size present at middle of chin.
- (iii) Swelling with dark colored contusion was found at upper leap in the middle and right side.
- (iv) Abrasion linear of ¼" size each heap of nose left side and right side.
- (v) Abrasion 2" x 1" at glabellas
- (vi) Linear abrasion semi lullar of ¼" size at left side of forehead.
- (vii) Abrasion 4 in number linier semi luner ¼" each in front of left ear with abrasion 1x1/2" at left ear over helix.
- (viii) Abrasion several in number around night knee at its lower parts and at joining part of front and sides of night thigh of size ranging brown ½" x ½" to 2" x 1/2" abrasion.
- (ix) Several abrasion tiny linier were present over medial side of upper part of left thigh.
- (x) Labia majora and minora were contused at their medial margin, hymen was found ruptured (recent) at two O'clock and seven O'clock. Position— with blood and blood clots in congested vagina. Exudate (serum of inside) was found ruptured hymen. On examination of vaginal swab, dead non motail spermatozoa was found.
- (xi) Abrasion 1 x1/4" each and dorsum of right wrist and dorsum of left forearm.
- (xii) Scratch abrasion ¾" size linier present at middle of interior chest wall.
- (xiii) Lacerated wound 3 ½" x 1" x bone deep was found over left temporal occipital



region behind left ear. Large Hematoma was found covering left temporal parietal and left side of occipital region upto foramen magnum fracture of left temporal and adjoining 1" x of occipital bone was found with inward dislocation of fractured piece. It was a committed fracture. Brain and meninges of corresponding region grossly lacerated with few small pieces of fracture bone was found inside the brain substance. Massive intra cerebral haemorrhage was found all around. Beside these ante-mortem injuries one ligature mark of ½" width was found obliquely placed over front and sides of neck. More marks at left posterior part below left ear. Width at left side was around.

On dissection:- no echymosis was found either any injury in the neck structure. This injury were postmortem in nature. Time since death was within 35 hours to 40 hours. Cause of death shock and haemorrhage by injury to head. All injuries were produced by hard and blunt substance, features of sexual assault, intercourse (recent) present.

10. During cross-examination it is evident that nothing has been procured at the end of the defence. From the postmortem report, it is apparent that the time elapsed since death has been found within 36-40 hours. That means to say, deceased might have been murdered in between 8th -9th .07.2002.

11. After duly acknowledging the status of the witnesses, it is evident that none of the members who were occupying the premises associated with affair of the hostel has been examined either at the end of the prosecution or at the end of the appellant and that being so, since when the deceased became missing has not come up



over the witnesses whoever been examined are an eyewitness. That means to say, the case is based upon circumstantial evidence.

12. PW-1 had visited the hostel after coming to know about the missing of Halima by way of intercepting the rumour. While PWs-3 and 4 who happen to be full brothers and were student of Adarsh Children Academy where Halima was also taking her study and were residing at a boys' hostel run by the school have gone to girls' hostel where in a room belonging to appellant, they have seen Raushan with Halima. PW-5 is informant. PW-7 is the house owner while PW-8 is police official, though not concerned with the investigation.

13. PW-2 is the witness on inquest and he had spoken nothing more than the same.

14. PW-5 is the informant who, during course of examination-in-chief, properly identified the status of the Sobha Devi to be proprietor of the school as well as hostel. She was residing at the hostel along with her family including that of her brother Raushan. He had further narrated that Halima, daughter of his *Sala*, student of Adarsh Children Academy, was residing in the hostel and further, on 08.07.2002, he had entrusted Halima under Sobha Devi. It has further been deposed that on the alleged date of occurrence he came to know that Halima was not present in the hostel whereupon, he had gone there and inquired from Sobha Devi. She disclosed that she (Halima)



is not present in the hostel. It appears that she might have gone elsewhere. She also disclosed that she is searching and also requested him to search. He had gone to search but, could not be able to locate her. On the same day at about 5:00 PM, he came to know that dead body of a girl is lying in the girl's hostel whereupon he had gone there and identified the dead body to be that of Halima having injuries over back of head. Blood was oozing out from her ears, mouth. Froth was also coming out. Hands and legs were broken. Police has also recorded his further statement. He, later on, came to know that Halima was raped by Raushan Kumar and then was done to death with the connivance of Sobha Devi. Exhibited his signature over Fard-e-beyan, seizure list. He had further stated that in his presence police had recorded inculpatory extra-judicial confessional statement of Raushan wherein he had admitted his involvement during course of commission of the crime. Identified the accused.

15. During cross-examination at para-10, he had stated that school and hostel are in common premise. Then there happens to be cross-examination with regard to topography of the premises. In para-12, he had further stated that girls' hostel is running in the house of one Chandradeep Babu, a retired Headmaster, by Sobha Devi wherein the small girl children of Adarsh Children Academy were being kept. In para-13, he had stated that the hostel is a double storey building having been duly fenced. It has got eastern front. In para-14,



he had stated that only small girl children were kept. One room was occupied by Sobha along with her children, her brother who at that very moment was aged about 16 years. Then had disclosed the boundary. In para-18, he had disclosed that school was running right from 7:30 to 4:00 PM. Children of his relatives, namely, Shah Nawaz, and Md. Meraj were also studying in the said school. In para-20, he had stated that inculpatory extra-judicial confessional statement of Raushan was recorded in his presence whereunder he confessed his guilt. He had further stated that Sobha used to go to school at 7:00 AM. In para-21, he had further stated that during course of inculpatory extra-judicial confessional statement, Raushan had disclosed that on the alleged date of occurrence, Sobha had gone to Kali Mandir at about 6:00 AM. Then at para-23, he had stated that he is not remembering whether in his presence Raushan had confessed that Halima had said that she would complain to *Didi* whereupon Raushan committed her murder. At that very time, *Phupha* of Raushan was present. In para-24, he had stated that one day prior to the occurrence he had dropped Halima at the hostel and then thereafter, he had seen her dead body. In para-25, he had stated that before inculpatory extra-judicial confessional statement of Raushan, he came across the news about the incident. Paragraphs-26 and 27 happen to be contradiction. In para-28, he denied the suggestion that it is not a fact that Sobha has got no complicity during course of crime



of rape as well as murder of Halima and she has been implicated only on suspicion.

16. PW-3 is Md. Meraj who happens to be son of relative of PW-5, informant and was a student of Adarsh Children Academy. He had stated that on the alleged date and time of occurrence, he was coming from hostel along with Shah Nawaz and Manisha. They came at the girls' hostel where had seen Raushan with Halima in the room of Madam. Raushan had directed them to go and further said that Halima will follow them. Madam was not present in the room. Madam was in the midst of way. She disclosed that it is time of school so, they should go to school. Accordingly, they had gone to school. Raushan came perplexed and asked whether Halima has come. Later on, he came to know that Raushan and Sobha committed murder of Halima. He had seen the dead body of Halima near bath-room of the hostel. During cross-examination, he had stated that at that very time, he was student of one class though was aged about 12 years. He further disclosed that Halima was student of LKG. Raushan was student of Class-7. Sobha Devi was residing west to road and was running girls' hostel. Boys' hostel was east to road. About 30-40 boys were residing in the hostel. Two teachers, namely, Vijay and Pankaj were also residing there. Raushan was own brother of Sobha and was residing with her. He had further stated that after putting his books in the room, he had proceeded towards girls' hostel. Sobha Devi met



during midst of way and directed him to go to class but he had gone to hostel where in the room of Sobha, he had seen Raushan and Halima. Then thereafter, he returned back. He had further stated that Husnain had disclosed that Sobha and Raushan had committed murder of Halima. He had also stated that older girls were also residing in the hostel. Then there happens to be contradiction. Then had denied the suggestion that he was not residing at the boys' hostel.

17. PW-4, Shah Nawaz had stated that the occurrence is of dated 09.07.2002 at about 7:00 AM. He along with his brother were students of said school. The had gone to see Halima at girls' hostel as Halima was student of Adarsh Children Academy and was residing there. When they had gone there, they had seen Raushan and Halima in a room of the hostel. Raushan had said to them that it is time of school, what you people are doing, whereupon they returned back. While he was sitting in class, Raushan came in a puzzled state and inquired about Halima. On the same day, when they have visited the girls' hostel, they came to know that Halima has been murdered. Later on, he came to know that Raushan and Sobha have committed murder. Sobha happens to be proprietor of the girls' hostel. Then had said that on the same day at morning hour, he met with Sobha in the way and at that very time, she had directed to him to go to school as it was time to school. On the aforesaid query, he had disclosed that they are going to see Halima. Sobha and Raushan happen to be sister and brother. He



came to know that Halima was raped and her murder was committed by Raushan. At para-5, there happens to be contradiction. In para-6, he had stated that 25-30 steps east from the girls' hostel, boys' hostel lies. Hostel is behind school. Halima happens to be his maternal cousin sister. He was residing in boys' hostel. In para-8, he had stated that Raushan was 2-4 years older than him. His statement was recorded two days after the occurrence. At para-10, he had stated that he met with Sobha on the road. He had seen the dead body of Halima in the evening hour. There was sign of throttling around the neck of Halima by means of wire.

18. PW-7 is Chandradeo Singh, a retired Headmaster in whose building the hostel and the school were running. He had deposed that school was running in his building of which Sobha was proprietor. Occurrence took place in the aforesaid school on 09.07.2002. One minor girl who was student of that school and was residing there in the hostel which was attached with the school, was murdered. Police had prepared seizure list in carbon copy in his presence over which he had put his signature. Identified. He further disclosed that wire and other items were recovered. Santosh Kumar has also put his signature in his presence (exhibited). During cross-examination at para-4 he had stated that Adarsh Children School was running in Belaganj of which Sobha Devi was the proprietor. Sobha Devi hired ground floor of his house wherein she was residing along



with her family. Raushan was also residing there. Few girls were also accommodated there. On the alleged date of occurrence at about 3-4 PM, teacher Sobha Devi having a girl in her lap was weeping. After hearing her cry, he got down. Sobha Devi used to visit temple in the early morning. Who committed murder and how and for what he is not knowing. Then at para-9, he had stated that his building is double storeyed, properly fenced. At para-10, he had stated that one latrine happens to be outside the house while another one is inside the house. Then had shown the boundary of his house. In para-11, he had stated that after departure of Sobha to school or temple, only her family members remained in the house.

19. PW-8 is Bipin Kumar, a Police Inspector. He had simply exhibited the documents prepared by C.D. Singh, the then O/C of Belaganj as well as I/O of the case. He has further stated that C.D. Singh suffered frequently from illness and in his absence, he was looking after the work on behalf of C.D. Singh. At para-7, he had also stated that he had arrested accused, Raushan and had recorded his inculpatory extra-judicial confessional statement which happens to be in his pen and bears his signature. Accordingly, exhibited the same. During cross-examination, he had stated that he had not investigated the case. However, he had filed requisition to add Section 376 IPC. He had further stated that Raushan had confessed to be the sole perpetrator of the crime. Sobha was not present in the hostel.



20. During course of statement recorded under Section 313 CrPC, appellant was confronted with the incriminating material in following way:-

“ *AAPKE VIRUDHA SAKSHYA HAI KI AAPNE DINANK 09.07.2002 KO HALIMA KHATOON KI HATYA APNE KAMRE MEIN KAR DIYA TATHA LAASH KO MAHILA HOSTEL BELAGANJ BAZAR KE PRANGAN MEIN PHEINK DIYA*” and on this score, learned counsel for the appellant raised an objection that by such questionnaire she has not been confronted with the situation justifying the finding recorded by the learned lower court.

21. After going through the evidences available on the record, it is evident that none is an eyewitness to the occurrence. So, this case rests upon the circumstantial evidence. It is settled principle of law that in a case based upon circumstantial evidence, the link should be channelized in such way that there should be no other hypothesis than the guilt of the accused. However, considering the fact that appellant has not been found guilty for an offence punishable under Section 302 IPC rather, under Section 201 of the IPC and for that, one has to see the ingredients as well as whether prosecution has succeeded in proving the case. In the case of *Sukhram v. State of Maharashtra* as reported in (2007) 7 SCC 502 , it has been as follows:-

18. The first paragraph of the Section contains the postulates for constituting the offence while the remaining three paragraphs prescribe three different tiers of



punishments depending upon the degree of offence in each situation. To bring home an offence under [Section 201](#) of IPC, the ingredients to be established are: (i) committal of an offence; (ii) person charged with the offence under [Section 201](#) must have the knowledge or reason to believe that an offence has been committed; (iii) person charged with the said offence should have caused disappearance of evidence and (iv) the act should have been done with the intention of screening the offender from legal punishment or with that intention he should have given information respecting the offence, which he knew or believed to be false. It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused. It hardly needs any emphasis that in order to bring home an offence under [Section 201](#) IPC, a mere suspicion is not sufficient. There must be on record cogent evidence to prove that the accused knew or had information sufficient to lead him to believe that the offence had been committed and that the accused has caused the evidence to disappear in order to screen the offender, known or unknown.

19. In *Palvinder Kaur Vs. The State of Punjab (Rup Singh-Caveator)* this Court had said that in order to establish the charge under [Section 201](#) IPC, it is essential to prove that an offence has been committed; that the accused knew or had reason to believe that such offence had been committed; with requisite knowledge and with the intent to screen the offender from legal punishment, caused the evidence thereof to disappear or gave false information respecting such offence knowing or having reason to believe the same to be false. It was observed that the Court should safeguard itself against the danger of basing its conclusion on suspicions, however, strong they may be. (Also See: *Suleman Rehman Mulani & Anr. Vs. State of Maharashtra* , *Nathu & Anr. Vs. State of Uttar Pradesh* , *V.L. Tresa Vs. State of Kerala*).

22. Now coming to the facts of the case inconsonance with the ingredients so laid down by the Hon'ble Apex Court as referred hereinabove in order to ascertain legality of the judgment impugned, it is apparent that accused Raushan happens to be brother



of the appellant. It is also apparent that he was residing along with the appellant in the same hostel. It is also evident that he was student of same school. It is also apparent that ground floor of PW-7 was taken on hire by the appellant wherein, apart from certain portion having under her occupation, remaining portion was being used as girls' hostel and the deceased, Halima was one of the occupants being student of the school run by the appellant. It is also evident that she was murdered and before that, as per medical evidence, she was raped. It is also evident that she was aged about seven years. It is also evident that none had seen her coming out of the hostel. It is also evident that her dead body was found within precinct of hostel near wash-room by the side of drain.

23. Now only question for determination is whether the appellant got herself actively involved in getting the evidence of the commission of offence disappear in order to screen the main offender or, in an alternative, she gave an information which she was knowing the same to be false regarding the occurrence. Appellant, being the sole proprietor of the hostel, was accountable for the welfare of the girls who were minor kids. It is not on the record having at her end that she had gone to Kali Mandir and remained there quite substantial time, that means to say, that she had not disclosed on her side at which time she returned from Kali Mandir though, PWs-3 and 4 have stated that she met with them in the midst of way and further had



directed that it is time of school so they should go to school which commence from 7:30 AM. This suggests that appellant was not in a way to school rather she was in a way to hostel. She had not offered at her end that she had gone to school or not. That means to say, she remained at hostel and so, she was well aware of the fact that Halima was missing. Then in that circumstance, what was onerous duty, just to inform the police with regard to missing of Halima at an earliest, so that, the police would have taken proper steps at an earliest.

24. Furthermore, it is also evident that there happens to be silence at her end whether she had visited school or not, more particularly, in the background of the fact that when PW-5, informant, after hearing rumour rushed to her place and inquired from her, she disclosed that she was searching and also directed him to search. During cross-examination of PW-5, it is evident that he was not at all cross-examined on the score whether he met with the victim at the school. Furthermore, there happens to be no discloser at her end that anybody else had come inside the hostel. So, throwing of dead body near bath room by some body else is completely ruled out. All these things, the appellant was required to explain as per Section 106 of the Evidence Act in the background of the fact that she was the custodian of the girl.

25. That being so, whatever information has been given by her that she was searching as Halima had gone missing to the PW-



5, is the information satisfying one of the ingredients of Section 201 of the IPC being false. That being so, the judgment impugned of conviction rendered by the learned lower court is confirmed.

26. However, from the record it is also evident that appellant has become widow during intervening period and further has got liability of siblings to discharge, on account thereof, the sentence so inflicted by the learned lower court is reduced and commuted to RI for 2 years retaining fine amount with default clause. It is also directed that the period having been undergone by the appellant is, accordingly, set off in accordance with Section 428 CrPC and in terms thereof, sentence is modified.

27. Appellant is on bail, her bail bond is hereby cancelled directing her to surrender before the learned lower court to serve out the remaining sentence within a fortnight failing, which the learned lower court will proceed against her in accordance with law.

(Aditya Kumar Trivedi, J)

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