

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.470 of 2015

Arising Out of PS.Case No. -638 Year- 2010 Thana -JEHANABAD District- JEHANABAD

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Ravi Sinha S/o Late Satyanand Sinha R/o village - Tikaitpur, P.S. Bihta, District - Patna, A/P Mohalla - Malah Chak, P.S. Jehanabad, District - Jehanabad

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ramakant Sharma
Mr. Ram Hriday Prasad
For the Respondent/s : Mr. S.N. Prasad, APP

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date: 12-01-2018

By the impugned judgment of conviction and order of sentence the sole appellant stands convicted under Sections 302, 364, 379 and 120B of the IPC and sentenced to suffer R.I. for life, R.I. for ten years with fine having default clause under Sections 302 and 364 of the IPC respectively. For the charge under Sections 379 and 120B of the IPC respectively he was sentenced to suffer R.I. for three years under each count. The present appeal questions the correctness of the judgment of conviction.

2. The prosecution case, in succinct, is that PW-6 being father of the deceased viz. Amrendra Narayan lodged a written report (Ext. 2) on 17.11.2010 alleging that in the morning of 15.11.2010 the appellant hired the Bolero vehicle owned and run



by his son Amrendra Narayan and both of them along with another co-accused had proceeded to Chapra from Malahchak. On the way, he had met with his maternal brother (PW3) at the bus stand situated at zero mile Patna. When the son did not return a call was made to him but there was no response. The informant also contacted the appellant on 16.11.2010 on phone whereon he replied that he had already left the vehicle and the deceased at Patna. The following morning it was made known to him that the dead body of his son was recovered from a well falling within Revilganj Police Station in the District of Chapra. The informant suspected the hand of the appellant and the another co-accused along with whom the deceased had driven to Chapra on being hired.

3. The lodging of the FIR ignited investigation which was taken up by PW-4 who had recorded the 'Fardbeyan'. The inquest over the dead body was prepared at the place of recovery of the dead body. The I.O. obtained the inquest report (Ext. 1) as also the post- mortem report (Ext.4). The investigation was complete but since the appellant had not been apprehended, PW-4 made over charge of the investigation to PW-5. Later, the appellant was arrested on 20.12.2011. On conclusion of investigation, the charge-sheet was laid by PW-5 whereon cognizance was taken and the case was committed to the Court of Sessions. On transfer, the same came on the file of the learned Trial Judge where the charges were framed



and read over/expained to the appellant to which he pleaded not guilty and claimed a trial.

4. To prove the case beyond doubt, the prosecution, in all, examined ten witnesses apart from producing the documentary evidence. The appellant took the plea of his false implication due to animosity. The summary of the prosecution witnesses is as follows: PW-1 Dilip Kumar @ Phutu Kumar is the neighbour of the informant and friend of the deceased. He has stated about the fact that the deceased owned the Bolero vehicle of which he was owner-cum- driver. It was being commercially used by him. PW-2 Ramesh Narayan is the full brother of the victim. He has stated about the deceased seen last going along with the appellant on the Bolero vehicle which was hired by the appellant to go to Chapra. PW-3 is the maternal brother of the deceased. He was then self employed as the truck driver. According to him, on 15.11.2010 while he was at the parking stand at zero mile, Patna the deceased had on way to Chapra stopped there and met him to divulge that his vehicle was hired by two persons sitting in the vehicle and he was proceeding to Chapra along with them. PW-4, as noted above, is the first investigating officer of the case who continued with the investigation upto 04.12.2010 when the same was handed over to PW-5 who submitted the charge-sheet. PW-6 is the informant and father of the victim. PW-7 Surendra Kumar @ Suresh Kumar Singh



and PW-8 Manish Kumar Singh are the two witnesses to the inquest report. Both parties have not elaborated on their evidence since the homicidal death of the victim is not the bone of contention. PW-9 Akhilesh Kumar is a formal witness who has proved the signature and endorsement on the F.I.R. (Ext. 2/1) and formal F.I.R. (Ext. 3). PW-10 Dr. Rameshwar Prasad was then posted as the Medical Officer, Sadar Hospital, Chapra. On 19.11.2010 at 9.30 A.M. he conducted the autopsy on the dead body and submitted the post-mortem report (Ext. 4). According to doctor the death had occurred due to asphyxia caused by throttling. The time elapsed since death was estimated between 48 to 72 hours.

5. The Trial Court, on a conspectus of the evidence adduced by the prosecution, found it a case based on circumstantial evidence. However, in appreciation of the evidence both oral and documentary, adduced at the Trial Court concluded that the chain of circumstances proved at the trial conclusively established the guilt of the appellant and, accordingly, convicted him.

6. Heard Mr. Ramakant Sharma, Sr. Advocate for the appellant and Mr. S.N.Prasad APP for the State. Perused the relevant materials on records.

7. The counsel for the appellant has urged that the prosecution has not been able to establish beyond doubt the factum of the appellant last seen with the deceased inasmuch as the place



from which the vehicle along with the appellant and the deceased had left for Chapra is also not proved. He would also urge that even if the prosecution is able to prove that the deceased was last seen in the morning of 15.11.2010 with the deceased going to Chapra on the vehicle hired this by itself would not complete the chain of the circumstances unerringly proving his involvement in the crime. In a case based on circumstantial evidence the motive for the occurrence is a relevant factum. Surprisingly, in the case at hand, no motive has been alleged much less proved. The evidence of PW-3 has also been seriously questioned. It is submitted that PW-3 had not named the appellant as one of the occupants of the vehicle seen at the parking place at zero mile, Patna. In Court, however, he has claimed to have identified the appellant. Such identification not testified earlier at the Test Identification parade shall carry no legal value. Reliance, in this regard, has been placed on 2008(2) Crimes 139 (SC) (Anil Kumar @ Pintu vs. State of Bihar (now State of Jharkhand) and on (2014) 4 SCC 715 (Kanhaiya Lal vs. State of Rajasthan).

8. Learned counsel for the State, conversely, stoutly supported the findings of guilt recorded against the appellant by the learned Trial Court. He submitted that the evidence of PWs 1, 2, 3 and 6 conclusively proved that the deceased had left in the company of the appellant on hiring his vehicle. The Trial Court has rightly



held the appellant guilty under Section 364 of the IPC. If the kidnapping/abduction of the victim by the appellant is proved by the oral evidence and within 24 hours thereafter the deceased was found to have been throttled to death the lighter burden cast on the prosecution is discharged and the onus shifts on the appellant to explain the circumstances under which the deceased received ante-mortem injuries resulting in his death. To support his contention, he placed reliance on the following judgments:-

- (i) (2001) 4 SCC 375 (Sucha Singh vs State of Punjab)
- (ii) (2003)11 SCC 761 (State of M.P. vs. Lattora)

9. To substantiate its case, the prosecution has examined four material witnesses in the case namely, PW-1 (Dilip Kumar @ Pintu Kumar), PW-2 (Ramesh Narayan), PW-3 (Satyendra Kumar) and PW-6 (Deonarayan Singh). PW-1 (Dilip Kumar) who happens to be the friend of the deceased though in his examination-in-chief has made an abortive bid to support the prosecution case of taking the deceased by the appellant along with other accused by hiring his Bolero vehicle but from perusal of testimony of the said witness, it appears that he does not happen to be eye witness of the aforesaid occurrence of taking the deceased along with his vehicle on hire by the appellant on the date of occurrence as in paragraph 6 of his cross-examination, he has stated that he had not seen Amrendra Narayan (deceased) with Ravi Sinha



(appellant). The mother of the deceased had divulged him regarding the same. Mother of the deceased has not come forward to corroborate the factum of divulgence of said fact to PW-1. Hence, said statement of the aforesaid hearsay witness is not admissible in the eye of law. Moreover, the said witness in paragraph 1 of his examination-in-chief has set up a case alien to the case of prosecution by stating that he had met with Amrendra Narayan in the market on 11.11.2010 and Amrendra Narayan had divulged him that he had to go to Chapra. On grilling, he further divulged that he was going to Chapra along with Ravi Sinha in the night of 14.11.2010. Then he warned him not to go in the night citing law and order situation. Then he went on 15.11.2010. But, there is no such case of the prosecution rather as per the statement of the informant, the appellant approached the deceased on 15.11.2010 at 8:00 PM and took him to the Chapra hiring his vehicle.

10. PW-2 (Ramesh Narayan) who happens to be own brother of the deceased though has claimed to have witnessed taking his brother (deceased) by Ravi Sinha and Ajay Kumar in Bolero of his brother on hire but he does not appear to be reliable and worth credence as in paragraph 5 of his cross-examination, he has stated that he has got no opportunity till today either to see or interact with Ravi Sinha, which means that the said witness had not witnessed taking away his brother by Ravi Sinha in Bolero on hire on the date



of occurrence. Moreover, as per his account, the accused persons including the appellant had taken the deceased from his house located in village Adluchak Daultapur, while as per prosecution case, the appellant and other accused had taken the deceased from mohalla Malahchak which is located at one and half kilometer from his house as per account of informant (PW-6) given in paragraph 2 of his cross-examination. The aforesaid aspect of the case also rules out witnessing of taking the deceased by the appellant in Bolero on hire by the said witness.

11. PW-3 (Satyendra Kumar) who happens to be cousin brother of the deceased though has stated in paragraph 1 of his examination-in-chief that he met with Amrendra Narayan (deceased) at parking stand located at Patna zero mile. Two persons were sitting in his vehicle. He did not know their names but could identify on witnessing them. He has further stated that Amrendra Narayan had divulged him that he was going to Chapra on reserving his vehicle on hire by the said persons and would regress at 4:00 PM. But, the said witness has not stated as to on which date he had witnessed the deceased on the said parking along with the accused. He has also not named the appellant in the occurrence. Though, he has stated in his examination-in-chief that he could identify the occupants of the vehicle on witnessing them but the appellant was not put on test identification parade to enable the said witness to



identify him as perpetrators of the crime as in paragraph 6 of his cross-examination, he has himself stated that he never took part in test identification parade and I.O. of the case namely Ranjeet Ram (PW-4) has stated in paragraph 7 of his cross-examination that witness Satyendra Kumar (PW-3) did not divulge the name of the accused to him rather he had divulged about physics of accused as bulky and of swarthy complexion but even then he did not conduct test identification parade of the accused. The said witness has for the first time identified the appellant in the court as perpetrator of the crime but such identification not testified earlier in the test identification parade shall carry no legal value.

12. Informant who happens to be father of the deceased examined in the case as PW-6 though has also claimed to have witnessed the appellant Ravi Sinha and co-accused Ajay Kumar taking his son along with Bolero on hiring it from his house on 15.11.2010 at 08:00 AM but he does not appear to be eye witness of the aforesaid aspect of the case. As as per his written report (Ext-2) the accused persons had taken the deceased along with vehicle from mohalla Malahchak and not from his house located at Village Adluchak Daulatpur and as per his account as given in paragraph 2 of his cross-examination, mohalla Malahchak is located at one and half kilometer from his house and in paragraph 4 of his cross-examination, he has also stated that it would be correct to say that



his son had proceeded to Patna taking the vehicle from mohalla Malahchak. The aforesaid vital contradiction regarding place of taking the deceased by the accused persons along with the vehicle and aforesaid statement of the informant candidly rules out witnessing of taking the deceased by the appellant along with the vehicle on hire on the date of occurrence by the informant. As per written report filed on 17.11.2010, the deceased had interacted with his cousin Satyendra Kumar (PW-3) on the way on 15.11.2010 at 11:00 AM at Patna that he was proceeding to Chapra taking the aforesaid two accused persons which means the aforesaid facts must have been narrated to him by PW-3 prior to lodging the written report on 17.11.2010. In paragraph 9 of his cross-examination, he has stated that Satyendra Kumar (PW-3) had called on them on the following day of the occurrence at his house but PW-3 in paragraph 1 of his examination-in-chief has stated that he learnt about the occurrence ten days later. He has not spoken about calling on the informant after he met and interacted with the deceased on 15.11.2010. Thus, the aforesaid contradiction between the said statement of the informant and PW-3 creates serious doubt about divulgence of the factum of witnessing the deceased with appellant at Patna to the informant by PW-3. The aforesaid facts and circumstances of the case eloquently indicate that none of the aforesaid witnesses had last seen the appellant with the deceased on



the date of occurrence. There is no other clinching and cogent circumstance brought on record by the prosecution indicating the complicity of the appellant in the occurrence.

13. PW-1 in paragraph 1 of his examination-in-chief has stated that he had seen the appellant Ravi Sinha roaming with the deceased in the market on 1-2 occasions earlier. PW-2 has stated in paragraph 1 of his examination-in-chief that there was friendship between Ravi Sinha and his brother (deceased) and PW-6 has stated in paragraph 5 of his cross-examination that Ravi Sinha (appellant) used to pay visit to his house along with his son (deceased). Ravi Sinha had arrived his house 3-4 days preceding to the occurrence to take prasad of Chhath. The aforesaid statement of said witnesses candidly indicates that the relation of the appellant with the deceased was cordial. The aforesaid aspect of the case rules out any ill motive of the appellant behind the occurrence. It is a case where no motive for the occurrence has been alleged and proved.

14. The case in hand appears to be based on merely circumstantial evidence. In the case of holding the accused guilty on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn must be cogent and firm. Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. The circumstances taken cumulatively should form a chain so complete that there is no escape



from the conclusion that within all human probability the crime was committed by the accused and none-else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

15. Hon'ble Apex Court in *Shard Birdhichand Sarda Vs. State of Maharashtra reported in 1984 (4) SCC 116* has postulated the cardinal principle regarding the appreciation of circumstantial evidence by holding that whenever the case is based on circumstantial evidence, the following features are required to be complied with and proved by cogent evidence:

(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely may be fully established (ii) The facts so established should be consistent only with the hypothesis of the guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty (iii) The circumstances should be of a conclusive nature and tendency; (iv) They should exclude every possible hypothesis except the one to be proved; and (v) there must be a chain of evidence so complete as not to leave any reasonable ground from the conclusion consistent with the innocence of the accused



and must show that in all human probability the act must have been done by the accused.

16. Hon'ble Apex Court in *Kanhaiya Lal Vs. State of Rajasthan reported in (2014) 4 Supreme Court Cases 715* has been pleased to rule that the circumstances of last seen together does not by itself necessarily lead to inference that it was accused who committed crime. There must be something more establishing connection between accused and the crime, that points to guilt of accused and none else. Mere non-explanation of being last seen together with deceased person on part of accused, by itself cannot lead to proof of guilt against him. It is further held that where a case rests squarely on circumstantial evidence, reiterated, inference of guilt can be justified only when all incriminating facts and circumstances are found to be incompatible with innocence of accused or guilt of any other person. Circumstances from which an inference as to guilt of accused is drawn have to be proved beyond reasonable doubt.

17. Hon'ble Apex Court in *Anil Kumar @ Pintu Vs. State of Bihar (Now State of Jharkhand) reported in 2008(2) Crimes 139 (SC)* has been pleased to rule that in case where accused is not known to the witness, ordinarily, the identification of an accused for the first time in court should be corroborated by previous identification in the test identification parade. We do not



find any extra-ordinary reason for accepting the evidence of the witness on the question of identification of the accused persons for the first time in court. This being the position, it is not possible to place reliance on the evidence of said witness.

18. The case law cited by the State in Sucha Singh Vs. State of Punjab (supra) and State of M.P. Vs. Lattora (supra) do not apply in the case under hand. As in the case under hand, the prosecution has utterly and miserably failed to prove that the appellant was last seen with the deceased while taking the deceased to Chapra along with other accused namely, Ajay Kumar hiring the Bolero vehicle of the deceased on the date of occurrence and abduction of the deceased by the appellant.

19. In the facts and circumstances of the case, we find and hold that the prosecution has utterly and miserably failed to prove the factum of abduction of the deceased by the appellant by taking the vehicle on hire to Chapra on the date of occurrence and also existence of any enmity between them, previous history of hostility and recovery of weapon from the appellant etc. by adducing convincing, cogent, consistent and worthy credence ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned lower court is set aside and the appellant is acquitted of all the charges levelled against him giving him benefit of doubt. As the appellant is in



custody, he is directed to be released forthwith from the custody, if not wanted in any other case. Accordingly, the Criminal Appeal is allowed.

(Prakash Chandra Jaiswal, J.)

I agree.
Kishore Kumar Mandal, J.

(Kishore Kumar Mandal, J.)

rohit/-

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