

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1145 of 2012

Arising Out of PS. Case No.-87 Year-2009 Thana- PANAPUR District- Saran

Mukesh Rai, S/O Matuki Rai @ Batuki Ray, Resident of Village- Chakiya,
P.S.- Panapur, District- Saran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Subodh Kumar Jha, Advocate
		Mr. Awadhesh Kumar Singh, Advocate
For the Respondent/s	:	Mr. Ashwani Kumar Sinha, APP

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 17-05-2018

We have heard parties and have perused the records of this case.

The appellant has preferred this appeal assailing the judgment of conviction and order of sentence dated 6.10.2012 passed by the 1st Additional Sessions Judge-cum-Special Judge, SC/ST (Prevention of Atrocities Act), Saran at Chapra in Sessions Trial No. 104/10 arising out of Panapur P.S. Case No.87/09 by which he has been convicted for the offences punishable under Sections 302/201 of the Indian Penal Code and he has been sentenced to undergo imprisonment for life under Section 302 IPC with a fine of Rs.20,000/- and in default of payment of fine, he has been further sentenced to undergo rigorous imprisonment for two years.



He has been further sentenced to undergo rigorous imprisonment for seven years under Section 201 of the Indian Penal Code. However, both the sentences have been directed to run concurrently.

The prosecution case, in brief, is that on 27.09.2009 at about 12 noon, accused Mukesh Rai came with cycle and took his son Guddu Nut, aged about 10 years, on pretext to visit Fair on bicycle. Later on, at about 4:00 P.M., his nephew, namely, Rajeshwar Nut informed that someone has made telephonic message from village Fatehpur that accused Mukesh has been caught hold by the villagers of Fatehpur as he has committed the murder of his son Guddu Nut. On this information, he along with family member and villagers reached there and found that about 200 persons were assembled and they were tied the accused and were kept in custody. On query, the accused confessed that his marriage was likely to be performed at Basantpur from the daughter of Bhuneshwar Rai so he gave Rs. 200/- to the victim to handover the same to Babita to whom he was likely to marry but he did not give and on demand made pretense so he committed murder of Guddu Nut. This statement was made before the informant and others.



On the basis of aforesaid fardbeyan of the informant, the police registered a case under Sections 302/201 of the Indian Penal Code vide Panapur P.S. Case No. 87/2009.

The police took up the investigation of the case. After investigation, the police submitted charge sheet against the appellant. Thereafter, the Chief Judicial Magistrate, Chapra took cognizance and the case was committed to the court of sessions, where charges were framed, to which, the accused person pleaded not guilty. Thereafter, trial started against the appellant.

During trial, the prosecution has examined altogether nine witnesses in support of its case. P.W.1 is Sunil Kumar Singh, P.W. 2 is Munna Singh, P.W. 3 is Rajendra Roy, P.W. 4 is Ganesh Nat, P.W. 5 is Dinesh Nat, P.W. 6 is Rajeshwar Nat, P.W. 7 is Bachcha Nat, P.W. 8 is Lakhichand Ram and P.W. 9 is Dr. K.M. Dubey.

The defence has not examined any witness on its behalf.

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

Now this Court is required to reappraise the prosecution evidence to see as to whether the prosecution has been able to



substantiate its case beyond shadow of all reasonable doubts or not?

P.Ws. 1 to 3 have been declared hostile by the prosecution.

P.W. 4 is Ganesh Nat, who has stated that on the date of occurrence at about 5.00 P.M., he was in his house and heard that Guddu Nat had been killed in Fatehpur Chawar and, thereafter, he went there with other villagers and saw that there was finger marks on the neck of Guddu Nat and in nose and mouth, soil was filled. Mukesh Rai (appellant) was caught hold by the villagers and made hostage there. In his cross-examination, he has stated that the informant Bachcha Nat is his elder brother and the informant works as a Raj Mistri. He found the deceased Guddu Nat dead when he had gone there. He cannot say other details. He has denied the false implication.

P.W. 5 is Dinesh Nat. He has stated in his examination-in-chief that the occurrence is of 4.00 P.M.. At that time, he was in his house and heard that in Goha Chawar, his nephew Guddu Nat had been murdered by strangulation. He went there and saw that in the nose and mouth of Guddu Nat, soil was filled. The villagers had caught hold of appellant Mukesh Rai and he confessed when being assaulted that he had killed Guddu Nat. In his cross-examination, he has stated that he cannot give details of occurrence and had



knowledge about killing of Guddu Nat through villagers. When he reached there, he found Guddu Nat was dead. Guddu Nat was of his nephew. The informant performs the work of Raj Mistri and they are labourers. Mukesh Rai (appellant) is the driver of JCB and ply the vehicle outside. He has denied false implication of appellant.

P.W. 6 is Rajeshwar Nat, who, in his examination-in-chief, has stated that on the date of occurrence at about 4.00 P.M., he was in his house. Umesh Singh informed him on mobile that son of Bachcha Nat, i.e., Guddu Nat has been killed in Fatehpur Chawar. After receiving the said information, he went there where he saw Guddu Nat had been killed by strangulation and in his nose and mouth, soil was filled. Mukesh Rai (appellant) was made hostage by the people. He confessed his guilt before the public that he had given Rs.200/- to the deceased to give it to his would be wife but he neither gave the money to his would be wife nor returned the same and was making lame excuse, as such, he became agitated and killed him by strangulation. In his cross-examination, he said that at about 4.00 P.M, he was in his house and the informant Bachcha Nat was also with him, who is his uncle. Umesh Singh belongs to Satura Mai Tola. Umesh Singh telephoned from the village where occurrence took place. He does not know the mobile



number of Umesh Singh by which he had called him. The call had come on his own mobile. The house of Bachcha Nat and his house are adjacent to each other. After receiving this information, he along with his other family members went to the place of occurrence. When they reached there, they found Guddu Nat was dead. The dead body was lying in the Chawar. Many people have assembled there. The dead body of Guddu Nat was brought to the police station. He had also accompanied them. The police took his signature on the FIR. The FIR was instituted in the police station on the fardbeyan of Bachcha Nat. Mukesh Rai (appellant) had confessed his guilt before the police. Before the police, he did not disclose that said information was received from Umesh Singh. He has denied false implication.

P.W.7 is Bachcha Nat, who is the informant of the case and father of the deceased. He has stated in his examination-in-chief that on the date of occurrence at about 2.30-3.00 P.M, he was at his door. The appellant (Mukesh Rai) had took his son Guddu Nat at about 10-11 A.M. on cycle. Rajeshwar Nat (P.W.6) told him that he has received an information on his mobile that Mukesh Rai had killed his son Guddu. After receiving the said information, he went to Fatehpur Chawar along with other persons where he saw the dead body of his son Guddu Nat and in his nose and mouth, soil



was filled. People had caught hold of Mukesh Rai there. The police reached there and his statement was recorded and, thereafter, the police took the dead body to the police station. Mukesh Rai (appellant) resides at some distance from his house. Rajeshwar Nat is his nephew and he informed him about the incident at about 3.00 P.M. on mobile. At that time, he was in his house and Rajeshwar Nat (P.W.6) was in the police station. At that time, the dead body was in the police station. After receiving the information, he along with others went there. Rajeshwar Nat (P.W.6) was present there from before. No other persons were in the police station. The dead body of his son was covered and he saw the dead body of his son after removing the cover. Who informed Rajeshwar Nat about the occurrence was not disclosed to him. Soil was filled in his mouth and nose. No injury was found on his dead body. He reached the police station at about 4.00-4.30 P.M. The police had recorded his statement and statement of Rajeshwar Nat, Ganesh Nat, Dinesh Nat at the police station. He had put his signature on his statement. After recording his statement, the dead body was sent for post mortem examination. His re-statement was not taken by the police. At the time of occurrence, age of his son was 10 years and he was in class I. He has denied false implication.



P.W. 8 is Lakhichand Ram, who has stated in his examination-in-chief that on 27.09.2009, he was posted in Panapur police station as Sub-Inspector and had recorded the fardbeyan of Bachcha Nat and also visited the place of occurrence in village Fatehpur Chawar. He recorded the fardbeyan of Bachcha Nat at the place of occurrence in village Fatehpur. After recording the fardbeyan, the case was instituted and he himself investigated the case. The FIR has been marked as Exhibit '1'. He had inspected the place of occurrence and has given the details description of place of occurrence. The dead body of Guddu Nat was lying at the place of occurrence and soil was filled in his mouth and nose and there was ligature mark on the neck. At the place of occurrence, inquest report was prepared, which has been marked as Exhibit '2'. Thereafter, he sent the dead body for post mortem examination. The villagers had caught hold the appellant Mukesh Rai at the place of occurrence and he was arrested and brought in the police station in custody along with the dead body. The formal FIR was registered on the basis of fardbeyan which has been marked as Exhibit '3'. During investigation, he took the statement of witnesses, namely, Rajeshwar Nat, Ganesh Nat, Rajendra Ram, Munna Singh, Sunil Singh, Dinesh Nat and took the re-statement of the informant and, thereafter, submitted the charge sheet. He has



found the sign of strangulation. He received the information of the occurrence on phone on 27.09.2009 at about 2.30 P.M. He does not know the name of person who informed on phone. He only informed that a murder had taken place in Koha Chawar. He had entered the information in the station diary. He has not mentioned in the case diary. The place of occurrence is 10-12 KM. east of police station. Chawar is much long and broad. He has given the boundary of Chawar. The dead body was found in the Chawar 500 yards west of village street. He was taken at the place of occurrence by the villagers of Fatehpur. At the place of occurrence, the informant Bachcha Nat, Rajesh Nat, Naresh Nat, Rajendra Ram, Munna Singh, Sunil Singh, Dinesh Nat and others were present. Rajeshwar Nat did not inform him that who had informed him on the mobile. The witnesses Sunil Kumar Singh, Munna Singh and Rajendra Ram made statement in respect of occurrence. There is no eye witness to the occurrence. The appellant was handed over by the villagers.

P.W.9 is Dr. K.M. Dubey, who had conducted the post mortem examination on the dead body of the deceased. In his examination-in-chief, he has stated that on 28.09.2009, he was posted at Sadar Hospital, Chapra as Medical Officer and on the said day, about 8.00 A.M., he performed the post mortem on the



dead body of Guddu Nat, aged about 10 years and found the following ante mortem and post mortem injuries :

*“Nasal bleeding mud in nose and mouth.
Scratch over neck. Eyes was bulged.*

On dissection- All the viscera were intact and congested.

In the opinion of the doctor, cause of death was asphyxia due to smothering. Duration of death within 24 to 48 hours”.

After hearing the parties and considering the evidence on record, it appears that according to the prosecution, P.Ws. 1, 2 and 3 had stated before the police that the appellant had confessed his guilt for the reason that the appellant had given Rs.200/- to Guddu Nat to give it to his would be wife but he neither gave the money to his would be wife nor returned the money to him which infuriated the appellant Mukesh Rai and in a fit of anger, he killed Guddu Nat and extra judicial confession was made in presence of P.Ws. 1, 2 and 3. However, P.Ws. 1, 2 and 4 have been declared hostile by the prosecution, as such, the case of the prosecution that the appellant had confessed his guilt in extra judicial confession before the P.Ws. 1, 2 and 3 cannot be accepted as they have been declared hostile by the prosecution. The Investigating Officer himself has stated that there is no eye witness to the occurrence and it is not a case of last seen also as no witness has stated that the deceased was seen in the company of appellant Mukesh Rai.



Except the statement of the informant that the appellant took his son on cycle from his house, there is no corroborative evidence that the deceased Guddu Nat was seen in the company of appellant. Further P.W. 6 Rajeshwar Nat has stated that he was informed by Umesh Singh on mobile that the dead body of Guddu Nat is lying in the Chawar and all other witnesses examined on behalf of the prosecution are hearsay witness and they are not eye witnesses and there is statement based upon the information received by P.W. 6 in which he has stated that he received information from one Umesh Singh that Guddu Nat had been killed and his dead body was lying in the Chawar. Even the said Umesh Singh has not been examined or produced by the prosecution to know about the source of his information. The circumstantial evidence is also not complete in order to indicate that the appellant has committed the crime and there are many missing link in the prosecution case. Admittedly, there is no eye witness and all the witnesses are hearsay witness and the witnesses before whom it was stated that the accused appellant had made extra judicial confession has also turned hostile. It is not even the case of last seen as none of the witnesses have stated that the deceased was seen in the company of appellant at any point of time.



In view of discussions as made above, judgment of conviction and order of sentence passed against the appellant is not sustainable and is, accordingly, set aside. The appellant is acquitted of the charges. The appellant, who is admitted in jail custody, would be required to be released forthwith, if not wanted in any other case.

In the result, this appeal is allowed.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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