

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 620 of 2013

Arising Out of PS. Case No.-13 Year-2005 Thana- Parasbigha District- Jehanabad

Manish Kumar @ Kintu Kumar, son of Lalan Sharma, resident of Village-
Gopalpur, P.S. - Parasbigha, District Jehanabad.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Amrit Anunay (Advocate), *Amicus Curiae*
For the State : Mr. S.N.Prasad (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 20-12-2018

The sole appellant has preferred the present appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') against the judgment of his conviction and sentence passed by Sri Shailendra Kumar, learned Additional Sessions Judge-III, Jehanabad (hereinafter referred to as 'Trial Judge') in Sessions Trial No. 30 of 2011/159 of 2012 (arising out of Parasbigha P.S. Case No. 13 of 2005). The appellant by judgment dated 14-05-2013 was convicted for commission of offence under Sections 364, 302, 201 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.'). By order dated 16-05-2013, under Section 364 of the I.P.C., he was sentenced to



undergo rigorous imprisonment for ten years, under Section 302 of the I.P.C., he was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- (ten thousand). In case of default in payment of fine, he was directed to further undergo rigorous imprisonment for one year. Further, by the same order i.e. order dated 16-05-2013, under Section 201 of the I.P.C., he has been sentenced to undergo rigorous imprisonment for seven years. All the sentences were directed to run concurrently.

2. Short fact of the case is that on 21-02-2005 at 22:30 hrs. (10:30 PM), Sub-inspector of Police-cum-officer incharge of Parasbigha Police Station, namely Ahmad Ali (P.W.10) recorded *fardbeyan* of Sunil Kumar (P.W.7). In the *fardbeyan*, the informant disclosed that he was having only one son, namely Monty aged about 6 years. On the same date i.e. 21-02-2005 at 12:00 noon, his son had gone out to play in the village, however he did not return. Thereafter, he along with all family members started to search his son in the village and other houses. During search, he got an information that Shambhu Kumar resident of Pirhi P.S. Kurtha, District- Arwal, who was residing in his nanihal (in the house of maternal grandfather) in Gopalpur, had carried his son to the house of Manish Kumar (appellant). The informant stated that Manish Kumar was anti-social element and he was in the habit of taking



intoxicant. On the basis of such suspicion, he along with number of villagers went to the house of Manish Kumar (appellant) and knocked the door. Thereafter, from backdoor, the appellant fled away. During search, inside the house of Manish Kumar (appellant) in the north-eastern side on a corner room, he noticed some fresh soil. After removal of such soil, the informant noticed one leg of his son. In presence of villagers, the dead body was taken out from the ditch and he saw that on the neck of his son, there was mark of strangulation. Again on search, it was found that grandmother of Manish, namely, Motijhari Devi and mother of Shambhu Kumar, namely Lalsa Devi all had fled away from the house. The informant claimed that Manish Kumar (appellant), conspiring with Motijhari Devi and Lalsa Devi, by strangulation had killed his son and with a view to conceal the dead body, after digging the floor of the house, the dead body was buried, which was recovered. The said *fardbeyan* was read over to him in presence of villagers and after finding it correct, he put his signature. The said *fardbeyan* was also signed by number of villagers, namely, 1. Srikant Sharma (P.W.2), 2. Sanjay Kumar (P.W.5), 3. Ganauri Singh (P.W.3), 4. Awadhesh Sharma (P.W.6), 5. Vijay Sharma (P.W.1).



3. On the basis of said *fardbeyan*, on 22-02-2005, a formal F.I.R., vide Parasbigha P.S. Case No. 13 of 2005, was registered for offence under Sections 302/201/34/120(B) of the I.P.C. against 1. Manish Kumar (appellant), 2. Sambhu Kumar (cousin brother of appellant), 3. Smt. Motijhari Devi (grandmother of appellant Manish Kumar) and 4. Smt. Lalsa Devi (mother of co-accused Sambhu Kumar). During investigation, first charge-sheet was submitted against three accused persons, which was submitted on 22-05-2005 keeping investigation pending against the appellant and finally on 31-03-2006, supplementary charge-sheet was submitted against sole appellant. In the case, after order of cognizance and completion of all formalities under Section 207 of the Cr.P.C., the case was committed to the court of sessions. On 09-2-2011, charge was framed against sole appellant under Sections 364, 302 & 201 of the I.P.C.

4. During the trial, to establish its case on behalf of the prosecution, altogether 10 witnesses were examined. Out of 10 witnesses, apart from informant (P.W.7), P.W.1 Vijay Sharma (co-villager), P.W.2 Srikant Sharma (uncle of the deceased), P.W.3 Ganauri Singh (co-villager), P.W.4 Sanju Devi (mother of the deceased), P.W.5 Sanjay Kumar (co-villager) and P.W.6 Awdhesh Sharma (co-villager) are witnesses, who in search of the victim,



had visited the house of the appellants and in their presence, the dead body was recovered. P.W.9 Ajay Sharma is a formal witness and he has proved the photo copy (certified copy) of seizure list relating to recovery of letter kept in the pocket of the appellant's shirt, which was hanging in his room. The said recovery was effected on the basis of confessional statement of co-accused Shambhu Kumar. The said confession had led to recovery of said letter, which was pertaining to kidnapping for ransom of Rs. two lakhs. P.W.7 is father of the deceased and informant of the case, who found the dead body in one of the room of the appellant. P.W.8 Dr. Akhauri Vijay Kumar on 22-02-2005 was posted as Medical Officer, Sadar Hospital, Jehanabad and on the same date, he had conducted *post-mortem* examination of the deceased, namely, Monty Kumar aged about 6 years. P.W.10 Sri Ahmad Ali on 21-02-2005 was posted as officer incharge of the Parsabigha Police Station, who recorded *fardbeyan* and investigated the case.

5. After completion of the prosecution evidence, statement of the appellant under Section 313 of the Cr.P.C. was recorded on 27-02-2013, in which, he claimed to be innocent, however; no defence witness was examined.

6. Sri Amrit Anunay, learned *Amicus Curiae*, after placing entire evidence, has argued that the prosecution has not



been able to establish its case beyond all reasonable doubt. He has raised serious doubt on the prosecution case on the ground that once the prosecution had claimed that number of villagers had reached the house of the appellant, then in presence of such huge mob, there was no possibility for the appellant or other accused persons to flee away. He further submits that prosecution is silent on the point as to how and who informed the police, whereas during trial, one of the witness stated that he went to the police station and informed the police. The investigating officer, who was examined as P.W.10, according to learned *Amicus Curiae*, has not whispered on the point of information received by him. He further submits that it is case of the prosecution that after recovery of dead body, police arrived at the place of occurrence on the same date, however; inquest report was prepared on the next morning i.e. on 22-02-2005 at 6:00 AM, which also creates doubt on the prosecution case.

7. Sri Amrit Anunay, learned *Amicus Curiae* has argued that the learned Trial Judge was not required to take any notice to the so-called letter, which was shown to be recovered from the pocket of the appellant's shirt pertaining to kidnapping and demand of ransom. He submits that the investigating officer in his evidence has admitted that he had not taken any step for getting



the handwriting of the said letter examined by any expert. He further submits that the prosecution has not been able to establish any animosity in between the informant or his family with the appellant or his family and as such, according to learned *Amicus Curiae*, the prosecution has not established its case beyond all reasonable doubt and as such, the appellant is entitled to be acquitted.

8. Sri S.N. Prasad, learned Addl. Public Prosecutor opposing the appeal has argued that it is specific case of recovery of dead body from the house of the appellant and as such, if for the time being, it is assumed that there is no other evidence, the recovery of dead body of the deceased from the house of the appellant, in view of Section 106 of the Indian Evidence Act, 1872, is enough to draw only inference that the appellant was one of the main culprit. Besides this, he has argued that it is case of the prosecution right from the *fardbeyan* that the minor son of the informant from afternoon went missing. During search, information was gathered that one of the co-accused Shambhu Kumar, who was residing in his nanihal house (house of maternal grandfather), which was house of the appellant, was seen with the deceased while he was carrying him. Only after getting information that the victim was carried by one of the co-accused to



the appellant's house, suspicion arose and thereafter, the informant with villagers visited the house of the appellant. On door being knocked, this appellant fled away from the backside. The informant entered into the house. He started searching with villagers and from north-eastern corner room, the dead body was recovered, which was buried after digging the floor. The recovery was made in presence of number of witnesses. The witnesses, who were present at the time of occurrence, had also stood as witness to the *fardbeyan* and all those witnesses stood the test of their cross-examination and their credibility cannot be questioned.

9. Learned Addl. Public Prosecutor further submits that though co-accused had made confession before the police, but since the confession had led to recovery of letter, that part of the evidence is admissible. The letter was found in shirt's pocket of the appellant, which was hanging in his room. He further submits that during search, in the room of the appellant, number of used injection of *FORTWIN* were noticed, which was indicative of the fact that the appellant was in the habit of taking intoxicant. The oral evidence has also been supported by the medical evidence, since the cause of death, during *post-mortem* examination, was noticed as Asphyxia i.e. due to strangulation. In view of aforesaid



fact, it has been argued that the prosecution has established its case beyond all reasonable doubt.

10. Besides hearing learned counsel for the parties, we have minutely examined entire evidence and after going through the same, we are of the considered opinion that the prosecution has established its case beyond all reasonable doubt and as such, there is no reason for interference with the judgment of conviction and sentence. However, before recording finding, it would be necessary to cursorily incorporate the evidence, which has come during the trial.

11. The informant Sunil Kumar (father of the deceased) was examined as P.W.7 and in his evidence, he has proved his signature on the photo copy (certified copy) of the *fardbeyan*. It is pertinent to indicate that the appellant was chargesheeted in the supplementary charge-sheet. Other accused were tried separately and this was the reason that photo copy (certified copy) of the documentary evidence were used during the present trial. The informant/P.W.7 has proved his signature on the *fardbeyan*, which was marked as Ext. 1/5. In his evidence, he deposed that his son was done to death on 21-02-2005. He was not having any other issue. He deposed that his only son at about 12:00 noon was shown photograph of god by co-accused Shambhu. While he



started searching his son, he was informed by his wife that Shambhu was showing photograph and her son had gone with Shambhu. Shambhu's nanihal was in the village of the informant i.e. Gopalpur P.S. Parasbigha, District- Jehanabad. He also identified the appellant, who was in dock, and said that he was cousin of Shambhu. During search, while they arrived the house of the appellant, he (informant) found that the door was closed. The villagers knocked the door, then they saw Manish, Shambhu, Motijhari and Lalsa Devi inside the house and when they entered inside, the accused persons fled away. During search, in one room, he noticed fresh soil, over which, there was a piece of wood. He saw one leg of his son. Thereafter, he along with villagers took out the dead body. He claimed that all the accused persons, conspiring with each other, had killed his son. He also proved his signature on the photo copy (certified copy) of the *fardbeyan*, which was marked as Ext. 1/5. This witness identified the appellant in dock. He further in paragraph-12 clarified that with the appellant, there was no animosity. In paragraph-14 of cross-examination, he deposed that he along with about hundred of villagers, had gone to the house of the appellant. In paragraph-21, while being asked as to at what time police arrived, he stated that he was not exactly recollecting but he said that it was about 1½ and 2. In paragraph-



28, he clarified that police in the morning took away the dead body and sent for *post-mortem*. In paragraph-29, he categorically denied the suggestion regarding non-recovery of dead body from premises of the appellant. On examination of the evidence of P.W.7, it is evident that this witness has established the fact regarding recovery of dead body, which was buried in a room of the house of the appellant.

12. P.W.1 Vijay Sharma is one of the co-villager. He too in similar manner has stated that wife of informant/P.W.7 had informed that Shambhu was showing photograph to the victim and suspected that he might had taken away the boy. Thereafter, along with the informant, this witness and other witnesses, namely Ganauri Singh (P.W.3), Sanjay Singh (P.W.5), Awdhesh Singh (P.W.6) and Suresh Sharma (not examined) and other number of villagers assembled there and visited the house of the appellant Manish Kumar and got the door opened, which was closed. During search, the dead body was found buried, which was taken out. Even in cross-examination in paragraph-8, he reiterated that wife of informant in his presence had stated regarding showing of photograph by the co-accused to the victim and also reiterated regarding presence of other witnesses, who have been examined in the present case. He further in paragraph-10 of his cross-



examination clarified that after recovery of dead body, the police was informed. Chowkidar was also informed and information was given through mobile. This witness too was cross-examined at length. On examination of his entire evidence, we do not find anything to examine his evidence with suspicion.

13. Similarly, P.W.2 Srikant Sharma has deposed, as has been deposed by P.W.7, and he too stated regarding the place, where the dead body was buried and he too had put his signature on the *fardbeyan*. He had stated that after the door was opened, he noticed Manish Kumar (appellant) and others inside the house and thereafter, the dead body, which was buried was extracted. After finding the dead body, he went to the police firstly. In the night, at 9:00, he went to *Kasai* and with mukhiya, he went to the police station. He left police station at about 10:00 PM and within 5 to 10 minutes, they reached to the place of occurrence. His evidence also corroborates the evidence of informant and other witnesses.

14. P.W.3 Ganauri Singh is also witness to the *fardbeyan* and he put his signature on the *fardbeyan*, which was marked as Ext. 1. He proved the signature of P.W.2 Shrikant Sharma on the *fardbeyan*, which was marked as Ext. 1/1. He is also witness to the confessional statement of co-accused Shambhu and on the confessional statement, he put his signature, which was marked as



Ext. 1/2. His evidence is almost similar to the evidence of other witnesses and shows regarding presence of other witnesses at the time of search as well as recovery of the dead body.

15. P.W.4 Sanju Devi is the mother of the deceased. In her evidence, she stated that the victim was her son and his name was Monty Kumar. She stated that at 12:00 noon, Shambhu (one of the co-accused) had come to her house. Shambhu was the cousin of Manish (appellant). She stated that Shambhu had shown one photograph to her son and her son had gone with Shambhu. Thereafter, he never returned. While searching, she rushed to the house of the appellant and on being asked, from inside Lalsa Devi said that the child was not in her house and he had not come to her house. Thereafter, she (Sanju Devi) returned back and again with others came to the house of the appellant. This time, number of villagers had also accompanied her. Thereafter, they got the door opened and she stated in paragraph-3 that thereafter, all the F.I.R. named accused persons fled away. She too deposed regarding the recovery of dead body from the room of the appellant. In her cross-examination in paragraph-7, she deposed that the accused persons were demanding money from her. Her father-in-law had retired and accused persons were demanding Rs. two lakhs. In cross-examination, she stated that even prior to the occurrence,



they were demanding money. She stated that about 15 days back demand was made, however she accepted that she had not informed the police. In paragraph-11, she further reiterated that while she went to the house of the appellant along with her, there were hundred of people. In paragraph-12, she has clarified that while the accused persons came out from their house, none apprehended them, rather they started searching the victim. Though, it was argued by Sri Anunay, learned *Amicus Curiae* that in presence of such a huge crowd, there was no possibility of fleeing away of the appellant, the evidence of this witness gives its answer. The statement in paragraph-12 of this witness makes it clear that for the informant, his family members and villagers, priority was to find out whereabouts of the victim and this was the reason that the appellant, taking advantage of those circumstances, fled away. In paragraph-14 of her cross-examination, she stated that she was not recollecting exact time of arrival of the police, but she reiterated that police arrived in night. On examination of her entire evidence, there is no reason to see her evidence with any doubt.

16. Sanjay Kumar (P.W.5) is an another co-villager, who is also witness to the *fardbeyan* and in his presence, seizure list relating to recovery of letter from shirt pocket of the appellant was



prepared. He also proved her signature, which was marked as Ext.1/3 and seizure list relating to recovery of letter is marked as Ext. 2. This witness too is consistent with the evidence of other witnesses regarding search and recovery of dead body from the house of the appellant.

17. P.W.6 Awadhesh Sharma is also co-villager and he is one of the signatory of confessional statement of co-accused (Shambhu). It is made clear that confession of co-accused Shambhu had led to the recovery of the letter relating to kidnapping and ransom. He proved his signature on the said confessional statement, which was marked as Ext.1/4.

18. P.W.9 Ajay Sharma is a formal witness and he has simply proved his signature on the photo copy (certified copy) of the seizure list relating to letter. The said letter was marked and identified as 'X'.

19. P.W.8 Dr. Akhauri Vijay Kumar on 22-02-2005 was posted as Medical Officer, Sadar Hospital, Jehanabad and on the same date, he conducted *post-mortem* on the dead body of Monty (deceased) S/O Sunil Kumar (P.W.7) aged about 6 years of village Gopalpur P.S. Parasbigha, District Jehanabad and in *post-mortem* examination, he found following ante-mortem injuries and noticed following facts:



“(i) Bruise 1/8”width with blackening all around the neck.

(ii) Abrasion over left ear 3/4” x 1/4”.

(iii) Abrasion over left side of neck 1/2” x 1/4”.

(iv) Abrasion over right elbow 1½” x 1/2”

(v) Abrasion over right side of back (lower part) 1” x ½”.

On dissection

(i) Neck:- Echymosis under the depth the skin bruise mark, fracture of the hyoide bone.

(ii) Chest:- Heart right cardiac chamber - full, left cardiac chamber - empty.

Lungs- Both right and left lungs congested.

(iii) Abdomen:- Stomach:- Undigested food material, liver, spleen and kidney- all intact & congested, urinary bladder- empty.

(iv) Skull :- Brain & meninges congested.

Cause of death:- Asphyxia due to strangulation.

Time since death – within 24 hrs.”

20. In paragraph-6 of his evidence, he further stated that during *post-mortem*, one Dr. Laxman Prasad was also present with him and he had also put his signature on the *post-mortem* report. He proved the signature of Dr. Laxman Prasad on the *post-mortem* report, which was marked as Ext. 1/6 and he deposed that the *post-mortem* report was in his writing & signature and entire *post-mortem* report was marked as Ext.3. On examination of the evidence of doctor, it is evident that cause of death is asphyxia due to strangulation.

21. Mr. Ahmad Ali (P.W.10) on 21-02-2005 was posted as officer incharge of Parasbigha Police Station and in his evidence, he proved the *fardbeyan*, which was marked as Ext.4. It



was prepared by him. He also proved the inquest report, which was marked as Ext.5. He, on the same date after arrival, recorded *fardbeyan* and took up the investigation. On the basis of said *fardbeyan*, he drew formal F.I.R. and started investigation of the case himself. During investigation, he recorded re-statement of the informant (P.W.7) and also recorded statement of other witnesses, namely, Sanju Devi (P.W.4), Shrikant Sharma (P.W.2), Ganauri Singh (P.W.3), Awadhesh Sharma (P.W.6), Vijay Sharma (P.W.1), Sanjay Kumar (P.W.5) & Ajay Sharma (P.W.9). During investigation, he inspected the place of occurrence. The place of occurrence was described by the Investigating officer in paragraph- 4 to 8 of his evidence. He described that inside house of the appellant in a corner room, he noticed a place (floor) which was dugged out measuring by 3 feet x 3 feet and depth of 2 feet. While the investigating officer arrived, he noticed that dead body was lying inside the courtyard of the appellant's house and the investigating officer was informed regarding the place, where dead body was buried, that was a corner room. The investigating officer has noticed regarding digging of the floor and also fresh soil. During inspection of the house, the investigating officer had also went inside the room of the appellant and found number of used syringes relating to injection *FORTWIN*. The investigating officer



was informed that the appellant was habitual of taking such drugs. Ofcourse, no seizure list was prepared in respect of those articles, but those facts were incorporated in the case diary and same was reiterated during his evidence. He proved *fardbeyan*, which was marked as Ext.4 and also inquest report, which was marked as Ext.5.

22. On examination of aforesaid entire evidence, it is established that prosecution has been able to prove its case beyond all reasonable doubt. It is specific case of the prosecution that from 12:00 noon, the son of the informant went missing. Before he went missing, the victim was seen with one of the co-accused, who was none else, but cousin brother of the appellant. His name was Shambhu, who was named as one of the F.I.R. named accused along with the appellant. Shambhu, as per evidence, was residing in his nanihal house with the appellant. During search and after getting information that the victim was lastly seen with one of the accused, suspicion arose and thereafter, the informant and witnesses, who have been examined in the present case along with number of villagers, went to the house of the appellant and search was made inside house in a corner room. It was noticed by the witnesses that the dead body was buried in the floor since fresh soil was noticed, but informant in his evidence had stated that



while he entered inside the room, he had noticed one leg of the deceased and thereafter, the dead body was extracted from the said room. It is case of the prosecution that while informant and villagers arrived, the appellant along with other three inmates were present and taking advantage of the crowd, who were in search of the victim, fled away. This also establishes regarding the knowledge of burying of the dead body inside the room. Same thing was also noticed by the investigating officer/P.W.10, which has elaborately been described in his evidence. The *post-mortem* report (Ext.3) depicts regarding the death, which was Asphyxia due to strangulation. On the neck also, some mark was noticed and bruises on the person of the deceased. It is established that the dead body was found inside house of the appellant and appellant was also seen fleeing away. In such circumstances, the learned Trial Judge on the basis of entire evidence has rightly passed the judgment of conviction and sentence warranting no interference.

23. In view of facts and circumstances, we are of the considered opinion that since prosecution has proved its case beyond all reasonable doubt, the learned Trial Judge has rightly passed the judgment of conviction and sentence.

24. Accordingly, the judgment of conviction and sentence dated 14-05-2013 and 16-05-2013 respectively passed in



Sessions Trial No. 30 of 2011/159 of 2012 (arising out of Parasbigha P.S. Case No. 13 of 2005) by Sri Shailendra Kumar, learned Addl. Sessions Judge-III, Jehanabad is, hereby, approved and appeal stands dismissed.

25. Before parting with the judgment, we must record our appreciation regarding proper assistance rendered by Sri Amrit Anunay, learned *Amicus Curiae*.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

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CAV DATE	NA
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