

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.202 of 1995

Appeal against the Judgment of conviction and sentence order dated 01.07.1995 passed by the learned Sessions Judge, Katihar, in Sessions Case No.100 of 1994.

1. Sk. Sajit, Son of Mohammad.
2. Sk. Sajul, son of Samsuddin.

Both are residents of village Rasidpur, P.S.- Harish Chandrapur, District Malda (W.B).

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Amish Kumar, Advocate. Mr. Krishna Chandra Jha, Advocate. Mr. S.K. Choudhary, Advocate.
For the State	:	Mr. Dilip Kumar Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 01-03-2019

1. This Criminal Appeal has been directed against the Judgment of conviction and sentence order dated 01.07.1995 passed by the learned Sessions Judge, Katihar, in Sessions Case No. 100 of 1994, by which and whereunder, he convicted the appellants for the offences punishable under Sections 302/34 and 201 of the Indian Penal Code and, accordingly, sentenced them to



undergo rigorous imprisonment for life for the offence punishable under Section 302/34 of the Indian Penal Code and to undergo rigorous imprisonment for five years for the offence punishable under Section 201 of the Indian Penal Code. However, both the sentences were ordered to run concurrently. It is pertinent to note here that by the same impugned Judgment, learned Sessions Judge, Katihar, acquitted the appellants from the charge framed under Section 364/34 of the Indian Penal Code.

2. P.W.3, SK.Balak, gave his statement to P.W.14, the then Officer-in-charge, Amdabad Police Station in presence of P.W.4 and P.W.5 to this effect that the marriage of his sister namely, Pasia Khatoon had taken place with appellant no.1, namely, Sk.Sajit three years back. He, further, stated that his sister, namely, Pasia Khatoon gave birth to a female child, namely, Jugni one and half years ago out of the aforesaid wedlock but after birth of Jugni, appellant Sk.Sajit started torturing to his sister making several allegations as a result whereof Pasia Khatoon started residing at her parental house. P.W.3, further, claimed that he along with P.W.4 and P.W.5 requested the appellant Sajit to take back Pasia Khatoon but he refused to take back Pasia Khatoon to his home raising questions against the character of Pasia Khatoon. P.W.3, further, claimed that when Sajit refused to keep Pasia



Khatoon with him, he and his family members asked the appellant Sajit to maintain Pasia Kahtoon, but he did not give any reply. P.W.3, further, claimed that one month prior, the appellant Sajit had come to his house and abused and threatened to kill Pasia Khatoon. P.W.3, further, claimed that on 07.08.1993, he as well as his other family members had gone to Bahiar in connection with their works and when they returned to their home at about 4P.M., his wife, namely, Bibi Fulki (P.W.10) informed that appellant Sajit and appellant Sajul had come at about 10.A.M. and they talked to Pasia Khatoon and after that, Pasia Khatoon along with her daughter Jugni left the home in the company of appellants. P.W.10 also informed that when she made query, Pasia Khatoon replied that she along with her husband was going to village Rasidpur. P.W.3, further, claimed that on 08.08.1993, he went to the Village of appellants but he did not find his sister Pasia Khatoon at the house of her husband and he made query from neghibours and learnt that his sister as well as his brother-in-law had not come to their home. P.W.3, further, claimed that he, thereafter, went to the house of appellant Sajul but Mohammad Sajul was not found present at his house. P.W.3, further, claimed that he as well as his other family members searched Pasia Khatoon but they could not



succeed to trace her out. P.W.3 claimed that the appellants took his sister with intention to commit murder.

3. On the basis of above stated statement of P.W.3, Amdabad P.S. Case No. 37 of 1993 was registered against the appellants for the offence punishable under Section 364/34 of the Indian Penal Code.

4. P.W.14, namely, Sachidanand Choudhary, the then Officer-in-charge of Amdabad Police Station, took the charge of investigation. He inspected the place of occurrence and also went to the houses of the appellants but they were found missing from their respective houses. However, in course of investigation, P.W.3 gave information to him that one week back, dead body of a girl was recovered near Katihar and P.W.14 also got information that the family members of informant (P.W.3) as well as P.W.3 had gone to see the dead body. P.W.14 having got the aforesaid information went to Katihar Mufassil Police Station and came to know that on 09.08.1993 a dead body kept in a gunny bag was found under the jurisdiction of Mufassil Police Station and after recovery of dead body of an unknown woman, Katihar Mufassil P.S. Case No. 263 of 1993 had been registered. P.W.14 went to Mufassil Police Station, where P.W.3, P.W.5 and P.W.1 were present. P.W.14 claimed that the photograph of recovered dead



body was shown to P.W.3 and others and having seen the photograph, P.W.3 and others claimed that the recovered dead body was of Pasia Khatoon. P.W.14, further, claimed that the cloths of dead body were also shown to P.W.3 and others and they claimed that the aforesaid cloths were of, Pasia Khatoon. This witness also inspected the place of occurrence of Katihar Mufassil P.S. Case No. 263 of 1993. In course of investigation, he received all the relevant documents of Mufassil P.S. Case No. 263 of 1993 and recorded the statement of witnesses. This witness claimed that the relevant documents of Katihar Mufassil P.S. Case No. 263 of 1993 was attached with the record of Amdabad P.S. Case no. 37 of 1993. After completion of investigation, P.W.14 submitted charge sheet against the appellants. The cognizance of the offence was taken and the case was committed to the court of Sessions, in usual course.

5. The appellants were put on trial and they stood charged for the offences punishable under Sections 364/34, 302/34 and 201 of the Indian Penal Code. The appellants denied the charges and claimed to be tried.

6. In course of trial, prosecution examined, altogether, 14 prosecution witnesses and also got exhibited postmortem report dated 09.08.1993 as Ext.1, the signature of informant of Katihar



Mufassil P.S. Case No. 263 of 1993 on its Fradbeyan as Ext.2, the signature of P.W.6 on inquest report as Ext.2/1 and Fradbeyan of the present case as Ext.3, the signature of witness Baleshwar Ram on Fradbeyan as Ext.2/2, the endorsement made by Gopal ji Singh, A.S.I., on Fradbeyan dated 08.03.1993 as Ext.4, the carbon copy of inquest report dated 09.08.1993 as Ext.5, formal F.I.R. dated 11.08.1993 as Ext.6, some paragraphs of case diary as Ext.7, the negative of photograph as Ext.8 and photograph of an unknown woman as Ext.9.

7. The statements of appellants were recorded under Section 313 of the Cr.P.C., in which, they reiterated their innocence and claimed their false implication. No evidence was adduced by the appellants in support of their defence but the perusal of trends of cross-examination of prosecution witnesses as well as statements recorded under Section 313 of the Cr.P.C. goes to show that the appellants completely denied the prosecution story.

8. Learned trial court having evaluated the prosecution evidences convicted the appellants for the offences punishable under Sections 302/34 and 201 of the Indian Penal Code on the basis of circumstantial evidences brought by the prosecution in course of trial. However, by the same impugned Judgment, learned



Sessions Judge acquitted the appellants from the charge framed under Section 364/34 of the Indian Penal Code.

9. Learned counsel appearing for the appellants assailed the impugned Judgment of conviction and sentence order arguing that the learned trial court committed error in convicting the appellants on the basis of insufficient evidence. He submitted that admittedly, none had seen the actual killing of the deceased and the prosecution case was based upon circumstantial evidence. He submitted that the prosecution tried to bring some circumstantial evidence to prove the guilt of the appellants but the so-called circumstantial evidences, as brought by the prosecution, were not sufficient to conclude that it were appellants, who committed the murder of the deceased.

10. He, next, submitted that prosecution relied upon the recovery of so-called dead body of Paria Khatoon, for which, Katihar Mufassil P.S. Case No. 263 of 1993 was registered. He submitted that according to the prosecution case, Pasia Khatoon was taken away by the appellants on 07.08.1993 from her parental house and on 09.08.1993 her dead body was recovered in the field situated at village Sarifganj and after that Katihar Mufassil P.S. Case No. 263 of 1993 was registered on the basis of Fradbeyan of P.W.6. Learned counsel of the appellant submits that the



prosecution has brought the aforesaid Fradbeyan on record in course of trial and the aforesaid Feradbeyan was proved by P.W.12, Gopalji Singh, the then ASI of Katihar Mufassil Police Station as Ext.4. Learned counsel submits that perusal of Ext.4 goes to show that the dead body of a Hindu Woman, aged about 35 years, was recovered, for which, Katihar Mufassil P.S. Case No. 263 of 1993 was registered. He, further, submits that the inquest report of aforesaid recovered dead body was prepared by P.W.12 and the carbon copy of aforesaid inquest report has been marked as Ext.5. He submits that perusal of Ext. 5 goes to show that the recovered dead body was an unknown Hindu woman, aged about 34 years. He submits that not only the above stated two documents but the postmortem report (Ext.1) of recovered dead body also goes to show that when the dead body was produced before P.W.2, he noted down in the postmortem report that the dead body of a female, aged about 35 years, was brought before him for postmortem examination. He also noted down in the postmortem report that the aforesaid unknown dead body was of a Hindu lady. He submits that P.W.2 and P.W.12 also claimed before the court that the recovered dead body was of a Hindu woman, aged about 35 years. He, further, submits that P.W.1, Md. Mansoor Ali admitted in his deposition that Pasia Khatoon was aged about 18



to 19 years at the time of alleged occurrence and, therefore, the aforesaid facts goes to show that the recovered dead body was not of Pasia Khatoon. He submits that one of the important circumstances on the basis of which prosecution claimed the conviction of the appellants is not free from doubt. He, further, submits that P.W.10 and P.W.11 claimed that on the alleged date of occurrence, appellants came at their house and forcibly took away the deceased as well as her daughter. However, both the aforesaid prosecution witnesses admitted in their deposition that the victim Pasia Khatoon had sweet relation with her husband. He submits that P.W.3 as well as other material prosecution witnesses claimed that after birth of female child, appellant, Sajit started torturing his wife, Pasia Khatoon, questioning her character and that was the motive for commission of murder of Pasia Khatoon. He submits that the admission of P.W.10 and P.W.11 regarding the relation of Pasia Khatoon with her husband completely demolishes the prosecution case and the aforesaid fact also goes to show that prosecution could not succeed to prove the motive of commission of offence. He, further, submits that as a matter of fact prosecution could not succeed to prove the complete chain of circumstance to show the guilt of appellants and the learned trial court passed the



impugned Judgment only on the basis of surmises and conjectures.

11. On the other hand, learned A.P.P. supports the impugned Judgment of conviction and sentence order arguing that the prosecution has brought sufficient circumstantial evidences on record to prove the guilt of the appellants and if all the circumstances, as brought by the prosecution in evidence, are taken, together, the aforesaid circumstances unerringly, point out fingers towards the guilt of appellants and, therefore, there is no ground to interfere into the impugned Judgment of conviction and sentence order.

12. Having heard the rival contentions of both the parties, we went through the record and lower court records. Admittedly, the prosecution case hinges upon the circumstantial evidence and none has seen the actual killing of Pasia Khatoon. The prosecution has brought following circumstances on record to prove the involvement of the appellants in the alleged crime:-

i. In the morning of 07.08.1993, appellants had gone to parental house of Pasia Khatoon and forcibly took her from her parental house.

ii. On 09.08.1993, the dead body of a woman was found in village Rasidganj and the prosecution witnesses having seen the



photographs and clothes of the dead body claimed that the aforesaid dead body was of Pasia Khatoon.

iii. After birth of female child, the relation of appellant Sajit was strain with his wife Pasia Khatoon and that was the reason appellants committed the alleged crime.

13. It has been laid down by courts in several decisions that the normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established that those circumstances should be of a definite tendency unerringly pointing fingers towards the guilt of the accused; that 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

14. Now the prosecution evidences adduced in this case have to be tested on the above stated settled principle of law.

15. As we have already stated that in course of trial, prosecution examined, altogether, 14 witnesses, out of them P.W.3 Sk.Balak is informant and full brother of Pasia Khatoon, P.W.4,



Sk. Chunnu is also full brother of Pasia Khatoon, P.W.5 Sk. Khaknu is father of Pasia Khatoon, P.W.9 Bibi Muniya is mother of Pasia Khatoon, P.W.10 Bibi Fulki and P.W.11 Afsana Khatoon are sisters-in-law (Bhabhi) of Pasia Khatoon whereas P.W.1 Md. Mansoor Ali is brother of husband of Pasia Khatoon's elder sister.

16. P.W.1 Md. Mansoor Ali has been declared hostile by the prosecution and in course of his cross-examination, the learned Public Prosecutor showed a photograph of a woman to him and, specifically, asked that the aforesaid photograph was of Pasia Khatoon but this witness expressed his inability to identify the aforesaid photograph as photograph of Pasia Khatoon. This witness denied this fact that on 15.08.1993 he had gone to Katihar Mufassil Police Station and identified one photograph as photograph of Pasia Khatoon. This witness also denied the statement said to have been recorded by the police in course of investigation. However, when this witness was cross-examined by the defence, this witness stated that at the time of alleged occurrence, Pasia Khatoon was aged about 18-19 years.

17. P.W.3 Sk. Balak (informant) supported the prosecution case and stated that one and half year ago, marriage of Pasia Khatoon was solemnized with appellant Sajit. This witness claimed that after birth of a female child, appellant Sajit started



neglecting Pasia Khatoon and also deserted his sister Pasia Khatoon as a result whereof she started residing at her parental home. This witness, further, claimed that on the alleged date of occurrence, while he as well as other male members of his family were at maize field, they heard noise that appellants were forcibly taking away Pasia Khatoon. This witness claimed that P.W.7 and other villagers said him that the appellants be permitted to take Pasia Khatoon back and, thereafter, appellants took away Pasia Khatoon. This witness, further, claimed that in the evening, he conveyed the Panchayati but Panches did not take any decision rather asked him to go and resolved the matter. P.W.3, further, claimed that in the evening of same day, he went to the houses of appellants but he did not find the appellants at their respective houses. However, the mother of appellant Sajit disclosed that Pasia Khatoon was taken away by Sajit. This witness, further, claimed that after that he went to the police station and gave his statement before the police. On being cross-examined, this witness said that Pasia Khatoon was residing at her parental house since two and half months and at the time of occurrence, the daughter of Pasia Khatoon was aged about one year. This witness, further, admitted that appellant Sajit had not divorced Pasia Khatoon. This witness, further, stated that his son, namely, Sk. Abbu and several other



boys of village had disclosed to have seen the appellants carrying Pasia Khatoon on a boat. This witness, further, admitted that his wife disclosed that Pasia Khatoon was forcibly taken away by the appellants. This witness also admitted in his cross-examination that he had seen the photograph of his sister at Mufassil Police Station and after seeing the photograph of his sister, he lodged the case at Amdabad Police Station. This witness also admitted that police of Katihar Mufassil police station had shown photograph and clothes of his sister and on the basis of photograph and clothes he as well as others identified that the aforesaid photograph and clothes were of Pasia Khatoon.

18. P.W.4 Sk. Chunnu has stated almost similar story and claimed that Pasia Khatoon had come to his house five months back. This witness stated that in next morning of the alleged occurrence he had gone to the house of the appellants but did not find his sister and in course of search, he went to Kaithar where he saw the sari and photograph of Pasia Khatoon and having seen the photograph and sari, he learnt that Pasia Khatoon was no more. This witness expressed his inability to show as to why Pasia Khatoon was killed. However, he identified the photograph of Pasia Khatoon in court. On being cross-examined, this witness admitted that when female child was born to Pasia Khatoon,



appellant Sajit sent her to parental home but this witness denied this fact that appellant Sajit sent Pasia Khatoon to her parental home questioning her character. However, this witness also admitted in his cross-examination that even, after, sending Pasia Khatoon to her parental home, appellant Sajit used to come to his home. This witness also admitted that the first wife of Sajit was residing with Sajit. This witness again expressed his inability to show as to why Sajit was not interested to take back Pasia Khatoon to his home. This witness also stated that on the alleged date of occurrence, he as well as other male members of his family had gone to field but his wife (P.W.11), his Bhabhi (P.W.10), his mother (P.W.9) and Pasia Khatoon were at home. This witness also admitted that female members of his family disclosed that Pasia Khatoon also interested to go along with the appellants. At paragraph 5 of his cross-examination, this witness admitted that he had not gone to Katihar Police Station and only his brother and father had gone to Katihar Police Station. This witness also admitted that when his brother and father returned from Katihar Police Station, the present case was lodged. This witness denied the suggestion of defence that Pasia Khatoon was a lady of questionable character and she was killed by this witness as well as his other family members.



19 P.W.5, Sk. Khaknu, is the father of victim Pasia Khatoon. This witness claimed that on the alleged date of occurrence, he was working in his field and, in the meantime, his grand son Abbu came there and disclosed that appellants took away Pasia Khatoon. This witness, further, claimed that having learnt the aforesaid incident he came to his home and saw the appellant, Sajit who was holding the hands of Pasia Khatoon whereas appellant Sajul had taken the daughter of Pasia Khatoon in his lap. This witness also claimed that both the aforesaid appellants took away Pasia Khatoon as well as her daughter by boat. This witness, further, claimed that his son went to the house of appellants but he did not find Pasia Khatoon at their respective houses. This witness, further, claimed that after one day of the alleged occurrence he again went to the houses of appellants and found them present at their respective houses but Pasia Khatoon was not present there. This witness, further, claimed that subsequently, he learnt that his daughter Pasia Khatoon was murdered by the appellants. This witness, further, claimed that he identified the dead body of Pasia Khatoon seeing her cloths as well as photograph. This witness also identified the photograph of Pasia Khatoon in court.



On being cross-examined by the defence, this witness stated that he had seen the appellants taking away the victim as well as her daughter by boat but this witness expressed his inability to remember as to whether he had made above statement before the police or not. This witness, further, admitted that after two or three days of the above stated occurrence, he learnt that his daughter was killed in Katihar and thereafter he as well as his son went to Katihar. This witness denied that Pasia Khatoon was a lady of questionable character and she was killed by him as well as his other family members.

20. P.W.9, Bibi Muniya, is the mother of victim Pasia Khatoon and this witness claimed that she learnt about the fact of taking away Pasia Khatoon by appellants from P.W.10 and P.W.11.

However, on being cross-examined, she admitted that appellant Sajit had not deserted Pasia Khatoon and she, further, admitted that since last three months from the date of occurrence Pasia Khatoon was residing at her home and prior to that Pasia Khatoon was residing at her matrimonial home. She, further, admitted that the appellant, Sajit, used to take care of Pasia Khatoon. She, further, admitted that Pasia Khatoon went to her *Sasural* several times. She, further, stated that whenever she came



to her parental home, she was taken to her *Sasural* by the appellant, Sajit, who used to come his Sasural oftenly.

21. P.W.10, Bibi Fulki, claimed in her deposition that on the first day of occurrence, at about 10 A.M., appellants came to her house and at that time, Pasia Khatoon was not present at the house rather she had gone to the house of co-villagers. She, further, stated that she went and called Pasia Khatoon and thereafter, appellants talked Pasia Khatoon and appellant, Sajit asked *Bidai* of Pasia Khatoon, upon which, she stated that her parents-in-law as well as her husband was not at her house but appellant Sajit insisted to take Pasia Khatoon back and forcibly took Pasia Khatoon as well as her daughter. She, further, stated that Pasia Khatoon was also ready to go with the appellants. She, further, stated that when her husband as well as parents-in-law came to house, she informed to them about the above stated incident and thereafter, her husband went to the houses of appellant Sajit but Sajit was not present at his house. She, further, stated that her husband searched Pasia Khatoon but could not succeed to trace her out. She, further, stated that she learnt today that Pasia Khatoon had been killed.

On being cross-examined by the defence, she admitted that her house as well as house of her parents-in-law are separate



and Pasia Khatoon was residing at the house of her parents. She, further, admitted that appellant, Sajit, oftenly used to come her house. She denied that Pasia Khatoon had fled away along with some person and she was killed by some unknown persons.

22. P.W.11, Afsana Khatoon, also supports this fact that on the alleged date of occurrence, appellants had come to her house and talked to Pasia Khatoon for near about one hour and after that appellants pressurised her as well as P.W.10 to sent Pasia Khatoon with them but when she as well as P.W.10 refused to sent Pasia Khatoon with appellants, appellants forcibly took Pasia Khatoon as well as her daughter. She, further, stated that her husband as well as her parents-in-law and *Bhaisur* came to the house and when they asked about Pasia Khatoon, she disclosed that Pasia Khatoon was forcibly taken away by the appellants. She, further, stated that her husband, *Bhaisur* as well as her father-in-law went to village Rasidpur. She, further, stated that after the aforesaid occurrence, she got information that Pasia Khatoon was killed. This witness having seen the photograph (marked as Ext. X) claimed that the said photograph was of Pasia Khatoon. This witness at time of identification of accused went near the Dock and identify appellant, Sajit, but failed to identified appellant,



Sajul. However, she came in witness box and stated that appellant, Sajul, was also present in the court.

On being cross-examined by the defence, she admitted that the relation of Pasia Khatoon with appellant, Sajit, was quite well and appellant, Sajit, used to provide cloths, ornaments and other things to Pasia Khatoon. She also admitted that relation of Pasia Khatoon with appellant, Sajit, was not strained. This witness admitted that Pasia Khatoon was not taken away towards river Ganga by the appellants. This witness, further, admitted that she had seen the photograph (Ext.X) thrice. She admitted that she had seen the aforesaid photograph at Katihar Mufassil Police Station as well as at her home and after that in the court.

23. P.W.6, Sk. Yasin, claimed that one Rajendra Singh of Ganga Ghat informed him that the dead body of a woman lying in his maize field and after that he gave information to Officer-in-Charge of Katihar Mufassil Police Station. He, further, stated that he along with Officer-in-Charge of Kaithar Mufassil Police Station went to the maize field, where he found dead body of a woman lying in the maize field. He, further, claimed that he did not find any injury on the dead body. However, he noticed the Sari of the dead body. This witness has been declared hostile by the prosecution.



On being cross-examined by the prosecution, this witness admitted that the police had prepared inquest report of above stated dead body in his presence and he had put his signature on the inquest report. This witness also admitted that photograph of dead body was taken. This witness, further, admitted that the photograph (Ext.X) was shown to this witness and this witness admitted that it was the same photograph, which was taken of dead body. On being cross-examined by the defence, this witness admitted that he had not made statement before the police that the photograph of dead body was taken in his presence. This witness denied this fact that he had made statement before the police that the dead body was of a Hindu woman.

24. P.W. 12, Gopalji Singh, the then S.I. of Katihar Mufassil Police Station, stated in his deposition that on 09.08.1993 he was posted at Katihar Mufassil Police Station and he had recorded the Fradbeyan of P.W.6, Md. Yasin, who having understood the contents of Fradbeyan put his signature on the said Fradbeyan. This witness proved the aforesaid Fradbeyan as Ext.4. This witness stated that he inspected the field of Rajendra Singh and found dead body of a woman lying in the field. He, further, admitted that he did not find any blood stained in the aforesaid field. This witness, further, admitted that he prepared inquest



report of the aforesaid dead body. This witness proved the inquest report as Ext.5. Furthermore, this witness stated that he gave information to Officer-in-Charge of Katihar Town Police Station and requested him to send a photographer and after that Officer-in-Charge of Katihar Town Police Station along with one photographer, Suresh Prasad came there and the photographer took photographs of dead body. This witness admitted that photographer did not hand over negative of photographs rather only positive copy of photograph was given to him. This witness having seen the photograph (Ext.X) stated that this photograph was of the same dead body of unknown lady. This witness, further, stated that he made attempt to get the dead body identified but no one could succeed to identify the dead body of aforesaid unknown woman. This witness, further, stated that he sent the dead body for postmortem examination. This witness, further, stated that on 16.08.1993, the relatives of said woman, whose dead body was found on 09.08.1993, came at Police Station and they identified the dead body. He, further, stated that P.W.3, P.W.4 and P.W.5 had come to police station for identification of dead body. This witness, further, stated that the aforesaid witnesses including P.W.11 having seen the photograph of dead body claimed that the aforesaid photograph was of Pasia Khatoon. This witness, further,



stated that he send all the relevant documents of Katihar Mufassil P.S. Case No. 263 of 1993 to Ahmadabad Police Station.

On being cross-examined by the defence, this witness admitted that on 16.08.1993 he came to the court, where he got information that a police case in respect of kidnapping of Pasia Khatoon had already been registered in Amdabad Police Station and the appellants had already been remanded in Amdabad P.S. Case No. 37 of 1993. This witness admitted in his deposition that when he saw the dead body found in maize field of Rajendra Singh, he thought that the aforesaid dead body was of a Hindu lady and that was the reason, he mentioned in the inquest report about the recovery of dead body of a Hindu woman. This witness denied this fact that the photograph of dead body was not taken rather the photograph of Pasia Khatoon was subsequently, handed over by her family members to him and he placed the aforesaid photograph in the present case. This witness also admitted in his cross-examination that he had not seized the cloths of recovered dead body rather when the cloths of recovered dead body was returned after postmortem examination, he put the aforesaid cloths on a tree.

25. P.W.13, Naiyar Gafoor, claimed that, on 09.08.1993, he was working as photographer and on the above stated date on



the direction of Officer-in-Charge of Katihar Mufassil Police Station, he went to Bairabari village and took photograph of dead body of unknown woman. This witness identified the negative of recovered dead body, which was marked as Ext.8. This witness, further, stated that on the basis of aforesaid negative, he prepared positive photograph of the aforesaid dead body. This witness also stated that he had handed over negative to the then Officer-in-Charge of Katihar Mufassil Police Station.

On being cross-examined, this witness stated that he had not made any entry in his register regarding the negative and photograph of recovered dead body as whenever he took photograph on the request of police, he used to hand over the negative and positive of the aforesaid photograph to police. This witness also stated that he never put any mark of identification on positive or negative of the photograph, if the said photograph is taken on the request of the police.

26. P.W.14, Sachidanand Choudhary claimed that on 11.08.1993, he was posted as Officer-in-Charge of Amdabad Police Station and on the same day, he recorded the Fradbeyan of P.W.3, which was marked as Ext.6. This witness stated that he inspected the place of occurrence and in that course raided the house of appellants but they were found absconding and the Pasia



Khatoon was also not found at the house of the appellants. This witness, further, stated that P.W.3 gave information to him that the dead body of a girl was found near Katihar City and having got the aforesaid information, he went to Katihar Mufassil Police Station, where Officer-in-Charge of Katihar Mufassil Police Station disclosed that on 09.08.1993, a dead body of unknown woman was found in the field near Bairabari and Katihar Mufassil P.S. Case No. 263 of 1993 was lodged in respect of recovery of aforesaid unknown dead body. This witness, further, stated that when he reached at Katihar Mufassil Police Station, he saw that P.W.3, P.W.4 and brother-in-law of P.W.3 were present at Katihar Mufassil Police Station. This witness, further, stated that photograph of the aforesaid dead body was shown to P.W.3 as well as his relatives, upon which, they claimed that the aforesaid photograph was of Pasia Khatoon. This witness, further, claimed that the cloths of the dead body were also shown to P.W.3 and his relatives and they claimed that the aforesaid cloths were of Pasia Khatoon. This witness also identified the photograph (Ext.X) in court.

On being cross-examined by the defence, this witness expressed his inability to say as to whether P.W.3 and P.W.5 have their separate homes or not. This witness also admitted that P.W.5



had not claimed before him that his grand son came at the field and informed that the appellants were taking away Pasia Khatoon. This witness also stated that P.W.5 had not claimed before him that when he came to his house, he saw the appellants taking away Pasia Khatoon.

27. After perusing and evaluating the above stated evidences, it is explicitly clear that one dead body of unknown woman was recovered on 11.08.1993 and after recovery of the aforesaid dead body, Katihar Mufassil Police Station Case No. 263 of 1993 was registered against unknown. It is also admitted position that at the time of preparation of inquest report of aforesaid dead body, P.W.13 mentioned in inquest report that the aforesaid dead body was of a Hindu lady. Furthermore, it is an admitted position that on the same day, the aforesaid dead body was sent for postmortem examination and P.W.2 conducted postmortem examination on the aforesaid dead body and P.W.2 mentioned in the postmortem report that the aforesaid dead body was of an unknown Hindu lady, aged about 35 years and the same age of said dead body was also mentioned by P.W.13 while preparing the inquest report of unknown dead body. Therefore, It is clear that P.W.2 and P.W.13 found that the dead body of unknown Hindu lady, aged about 35 years, was found in the maize



field of Rajendra Singh at village Bairabari. P.W.12 claimed that one photographer came to take photograph of unknown dead body. P.W.13, Naiyar Gafoor, stated that he went to take photograph of unknown dead body at village Bairabari and took photographs of dead body. Further, P.W.12 stated that he got only positive copy of aforesaid photograph whereas P.W.13 claimed that he had handed over positive and negative copy of photograph to the then Officer-in-Charge, Katihar Mufassil Police Station. Admittedly, the then Officer-in-charge of Katihar Mufassil Police Station has not been examined and none examination of the then In-charge of Katihar Mufassil Police Station becomes fatal for prosecution case as prosecution could not succeed to prove this fact beyond all shadow of reasonable doubts that the positive and negative copy of the photograph were in possession of Officer-in-Charge of Katihar Mufassil Police Station. Moreover, P.W.1 has admitted in his cross-examination that Pasia Khatoon was aged about 18 to 19 years at the time of alleged occurrence whereas postmortem report as well as inquest report of recovered dead body of Katihar Mufassil P.S. Case No. 263 of 1993 go to show that the dead body of unknown Hindu woman, aged about 35 years was recovered. No doubt, the family members of Pasia Khatoon claimed to have identified the photograph of Pasia Khatoon before the police as



well as before the court but the entry in the inquest report as well as postmortem report regarding the age of recovered dead body of unknown woman creates doubt about the claim of the prosecution witnesses that the dead body recovered in Katihar Mufassil P.S. Case No. 263 of 1993 was of victim Pasia Khatoon.

28. P.W.3, P.W.4 and P.W.5 claimed in their respective depositions that the appellant, Sajit, used to doubt the character of victim Pasia Khatoon after birth of her female child and he deserted Pasia Khatoon, who started residing at her parental home but P.W.9, P.W.10 and P.W.11 admitted in their respective depositions that the relation of appellant, Sajit and Pasia Khatoon was cordial and appellant Sajit was very caring of victim Pasia Khatoon. Therefore, the aforesaid contradiction in the statements of prosecution witnesses also creates doubt about the claim of P.W.3, P.W.4 and P.W.5 that the victim Pasia Khatoon was killed by the appellants as appellant, Sajit, was doubting the character of Pasia Khatoon.

29. No doubt, P.W.10 and P.W.11 claimed that on the alleged date of occurrence, appellants came at their home and forcibly took away Pasia Khatoon and her daughter but P.W.10 admitted in her deposition that she along with her husband resides separately from her father-in-law as her father-in-law resides in a



separate house whereas her husband also resides in another house. It is admitted case of the prosecution that at the time of alleged occurrence Pasia Khatoon was residing at her father's house and, therefore, the aforesaid circumstance also creates doubt about the claim of P.W.10 and P.W.11 that the appellants came at their house and took away victim Pasia Khatoon from there.

30. Learned trial court has convicted the appellants on the basis of circumstantial evidences as earlier referred by us but taking note of the above stated infirmities in the prosecution case, we are of the view that prosecution could not succeed to prove complete chain of circumstances to proved the guilt of appellants because for seeking the conviction on the basis of circumstantial evidence, prosecution is duty bound to prove complete chain of circumstances which unerringly points out finger towards the guilt of accused. In the present case, we are of the view that the prosecution failed to prove complete chain of circumstances and, therefore, appellants are entitled to get the benefit of doubt.

31. On the basis of aforesaid discussions, this criminal appeal is allowed and the impugned Judgment of conviction and sentence order dated 01.07.1995 passed in Sessions Case No. 100 of 1994 are hereby set aside. The appellants are acquitted of the charges framed against them giving benefit of doubt. Both the



appellants are on bail. They are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.03.2019
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