

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.11 of 1995

Md. Mumtaz son of Maksood Mian resident of village Pakhnaha, P.S. Baira,
District-West Champaran, Bettiah.

... .. Appellant

Versus

State Of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Ranvir Singh, Amicus Curiae
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 : 18-02-2019

1. This appeal has been preferred against the judgment of conviction and sentence order dated 28.11.1994 and 30.11.1994 respectively, passed by learned Sessions Judge, West Champaran, Bettiah in Sessions Trial No. 117 of 1990 by which and whereunder learned Sessions Judge, West Champaran, Bettiah convicted the appellant for the offences punishable under Sections 302 and 201 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life for the offence punishable under Section 302 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. Both the sentences were ordered to run concurrently. However, learned Session Judge did not impose any fine upon the appellant for the offence punishable under Section 302 of the Indian Penal Code.

2. Briefly stated fact of the prosecution is that PW-2, Chhotelal Mahto, gave his fardbeyan to PW-10, namely, Surrender Prasad Singh on 03.10.1989 at about 9 a.m. to this effect that on 27.09.1989, his adopted daughter, namely, Basanti Kumari had gone in Sareh of village Sirisia Mathia to graze her goats. He further stated that on the same day at about 11 a.m., PW-6 Kedar Prasad, saw that his goats were being taken away by one muslim man of village Pakhaha upon which he raised objection and started making query from him but the aforesaid man fled away towards western side, leaving the aforesaid goats there. The aforesaid PW-6, Kedar Prasad, raised alarm upon which he (informant) PW-2, Hridya Narayan Prasad (PW-9), Chandi Sah (PW-3), Rabindra Sah (PW-9), Jhagaru Mahto (PW-8), Jairam Prasad (PW-5), Sk. Nazir and others came running there and chased the aforesaid man but the aforesaid man managed to escape from there through sugar cane field. He further claimed that he as well as others started searching Basanti Kumari but could not succeed to trace her out. They also made attempt to search the



above stated man but they could not succeed to trace him out. PW-2 (Chhotelal Mahto) further claimed in his fardbeyan that in the next evening, he got information that one person was apprehended by the police on the accusation of stealing goats and was brought to the police station. Having got the aforesaid information, he along with his co-villagers went to police station, where he identified the appellant, as the person who had made attempt of taking away his goats on the alleged date of occurrence. Furthermore, PW-2 claimed that in the same night, he got information from Charwaha that some foul smell was coming out from the bush of grass near Sirisia School. Having got the aforesaid information, he along with several villagers went to Sareh and started searching there. However, in the next morning, the dead body of Basanti Kumari was recovered from a ditch situated in the field of Shahid Khan. The aforesaid dead body was completely in decomposed stage and the head of the aforesaid dead body was separated and was thrown at the distance of ten steps from where the torso of the said dead body was recovered. Animals had eaten flesh of the dead body and one leg of the dead body was also separated. PW-2 also recovered the blood stained frock of deceased Basanti Kumari and identified the dead body of Basanti Kumari on the basis of cloths found on the said dead body.



PW-2 claimed that it was appellant, who committed the murder of Basanti Kumari and thrown her dead body in the field of Shahid Khan.

3. On the basis of aforesaid fardbeyan of PW-2, Bairia P.S.Case No. 114 of 1989 for the offence punishable under section 302/201 of the Indian Penal Code was registered and on the same day i.e. 03.10.1989 at 11 p.m. formal F.I.R was drawn up against the sole appellant.

4. PW-10 took charge of investigation. He prepared inquest report and sent the dead body for postmortem examination, recorded the statements of witnesses, inspected the place of occurrence and on the basis of so- called confessional statement of appellant, recovered one dagger from paddy field of Md. Hatim Khan. After completion of investigation, PW-10 submitted charge sheet against sole appellant for the offence punishable under section 302/201 of the Indian Penal Code.

5. Cognizance for the offence was taken and the case was committed to the court of session in usual course. The sole appellant was put on trial and, accordingly, he stood charged for the offences punishable under section 302/201 of the Indian Penal Code to which he denied the charges and claimed to be tried.



6. In course of trial, prosecution examined, altogether, 11 witnesses and also got exhibited certain documents.

7. The statement of appellant was recorded under section 313 of the Cr.P.C in which he reiterated his innocence. The appellant also got examined two witnesses and proved certain documents in support of his defence and from perusal of statement of defence witnesses as well as trends of cross-examination of the prosecution witnesses, it is obvious that the appellant took stand that his uncle namely, Fazalu Rahmen had filed a complaint case against the police officials of Fahhakana Centre on 23.09.1989 and due to the above stated reason the local police in collusion with the prosecution witnesses falsely implicated the appellant in the present case.

8. Learned trial court having perused the materials available on the record, rejected the stand of appellant and convicted the appellant on the basis of circumstantial evidences as admittedly, there was no eye witness of the alleged occurrence.

9. Learned amicus curiae, Mr. Ranvir Singh, appearing for the appellant assailed the impugned judgment arguing that the learned trial court failed to take note of this fact that the prosecution could not succeed to bring the complete chain of evidence to prove the guilt of the appellant. He further submitted



that admittedly, none had seen the actual killing of the deceased and the entire prosecution case was based on circumstantial evidence. Continuing his submission, he submitted that to convict a person on the basis of circumstantial evidence, the prosecution is duty bound to place the complete chain of circumstances linked with each others pointing out guilt towards the accused but in the present case, the link of chain of circumstances is missing but even then, the learned trial court convicted the appellant which is not in accordance with law.

10. He, further, submitted that the prosecution brought two circumstances:- First, the appellant was seen by the witnesses, taking away the goats of the deceased and second the dagger used in committing the murder of deceased was recovered from a paddy field on the basis of confessional statement of appellant. He, further, submitted that the aforesaid two circumstances are not sufficient to prove the guilt of the appellant because the seized dagger was never sent for chemical examination nor any blood stain was found on the aforesaid dagger. He further submitted that moreover, the aforesaid dagger was not produced before the trial court nor seizure list witnesses were examined. Learned amicus curiae referred the decision of **Pawan Kumar Yadav vs. State of Bihar, reported in 2015(1) P.L.J.R 74** and submitted that in



similar situated fact, a Division Bench of this Court acquitted an accused from the charge of section 302 of the Indian Penal Code, though in the above stated case, one Dabiya was said to be recovered on the basis of confessional statement of the accused.

11. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that the appellant was seen taking away goats of the deceased on the alleged date of occurrence and subsequently, on the basis of confessional statement made by the appellant, the dead body of deceased as well as dagger used in committing the murder of the deceased, were recovered. He submitted that the aforesaid circumstances clearly indicate that it was appellant, who committed the murder of deceased and, therefore, the learned trial court rightly convicted the appellant having relied upon above stated circumstances.

12. Admittedly, none has seen the actual killing of the deceased and the conviction of appellant is based on circumstantial evidences. Now it has to be seen as to whether the aforesaid circumstances as referred by the learned Sessions Judge in impugned judgment were sufficient to convict the appellant or not.

13. PW-2, Chhotelal Prasad is the informant of the present case. This witness claimed that on the alleged date of



occurrence, deceased Basanti Kumari had gone to Sareh to graze the goats but appellant took her towards Baswadi and started taking away the goats. This witness further claims that he snatched the goats from the appellant but appellant managed to flee away from there. This witness further claims that after three days of the aforesaid occurrence, the dead body of the deceased Basanti Kumari was recovered. This witness admitted in his cross-examination that the appellant was well known to him from before. This witness further admitted that after 4 to 5 days of the alleged occurrence, he lodged the case and between the aforesaid period, he did not give any information to police regarding the above stated occurrence. This witness further admitted in his cross-examination that he was at the distance of half kilometer from the place where Basanti Kumari was grazing the goats and it was PW-6, who called him and disclosed that the appellant was taking away goats. This witness also admitted that when he reached on the place of occurrence, he did not see Basanti Kumari. At para 14 of his cross-examination, this witness admitted that after institution of the present case, the dead body of deceased Basanti Kumari was recovered near Bamboo Clumps. This witness further admitted that Chokidar, Dafadar and Daroga also came there where the dead body of Basanti Kumari was recovered. This



witness denied the suggestion of the defence that he lodged the present case in collusion with police as one Fazlu Rehman had lodged case against the police.

14. PW-3, Chandi Shah, claimed that on the alarm raised by PW-6, he went running and saw the appellant was taking away goats. This witness further claims that he as well as PW-6 chased the appellant but he got himself hide in a field. This witness further states that on the next day of the alleged occurrence, he was called by the police and thereafter, he went to police station. This witness further admitted that the appellant was at the police station and the appellant was shown to him and he identified the appellant. This witness further admitted that decomposed dead body of deceased Basanti Kumari was found near bamboo clumps. This witness also stated that one day prior to the above stated occurrence, the appellant had gone near Sisiya Bhati school. This witness further stated that the appellant had committed the murder of another girl three days prior to the alleged occurrence. This witness admitted in his cross-examination that information regarding the alleged occurrence had already been given to police and after that Daroga apprehended the appellant. This witness also admitted that the appellant was well known to him from before but when information regarding the occurrence of taking away goats was



given, the name of the appellant was not mentioned in the aforesaid information. At para 15 of his cross-examination, this witness stated that police had recovered the dead body in his presence and this witness further stated at the same paragraph that he as well as others had searched the dead body and, thereafter, informed the police. This witness also admitted that the dead body of deceased was recovered from the field of Shahid Khan and seizure list was prepared which was signed by witnesses Sheikh Makhsood, Sheikh Hashin and others.

15. Almost similar statement has been made by PW-4, Hridya Narayan Prasad. This witness stated that on the alleged date of occurrence while he was going to his field, he heard the alarm raised by PW-2, Chhotelal Prasad and PW-6, Kedar Prasad who were shouting that the thief has been fleeing. This witness further stated that he saw the appellant, fleeing from there. This witness further stated that after one week of the aforesaid occurrence, he learnt that one cattle thief was apprehended and he along with PW-5 Jairam Prasad, PW-6 Kedar Prasad , PW-2 Chhotelal Prasad and others went to police station where he identified the appellant. This witness further stated that PW-2 had gone to police station to give SANHA in respect of missing of deceased Basanti Kumari. This witness further stated that he as



well as others disclosed before police that it was appellant who was taking away goats of PW-2. This witness further claimed that in his presence and others including Daroga, the appellant confessed that he had committed the murder of deceased Basanti Kumari and threw her dead body in bamboo clumps. This witness further stated that he along with Daroga, Chokidar and others went near the bamboo clumps where the dead body of deceased was recovered. This witness also claimed that he, too, identified the dead body of deceased. This witness admitted that the appellant was well known to him from before. This witness at para 14 of his cross-examination admitted that when Basanti Kumari could not be traced out, it was doubted by him and other witnesses that Basanti Kumari might have fled away from her home and that was the reason, the information regarding missing of Basanti was not given to police. This witness claimed that local Chokidar and other persons informed him and others that one thief had been apprehended and on the basis of aforesaid information, he as well as others went to police station and identified the appellant. This witness admitted that police recovered the dead body of deceased but police did not find blood from where the dead body of deceased Basanti Kumari was recovered. This witness further admitted at para 18 of his cross-examination that when the dead



body was identified by the witnesses, the appellant was not brought there by the police. This witness further admitted that he had not seen the appellant with police and police had come to the village on next day. This witness further admitted at para 20 of his cross-examination that after two or three days of recovery of dead body of deceased, police came to his village but he could not meet police on that occasion rather PW-6 had disclosed to him about the arrival of police.

16. PW-5, Jairam Prasad, also claimed that having heard the alarm of PW-6, he went running to the place of occurrence and chased the thief. This witness further claimed that he had seen the face of thief but could not know the name of thief. He further stated that after five to six days of the alleged occurrence, he went to police station along with others and identified the appellant. This witness also claimed that police made query from the appellant in his presence and, thereafter, the appellant confessed before the police and others that he had committed the murder of deceased Basanti Kumari and had thrown her dead body in bamboo clumps. This witness further stated that after the aforesaid disclosure, the appellant was taken near the said bamboo clumps from where the dead body of the deceased was recovered. At para 13 of his cross-examination, this witness stated that he came to



know from PW-6 about taking away goats by the appellant. However, in the same paragraph he claimed that he had seen the appellant taking away the goats. This witness further admitted at para 15 of his cross-examination that he had not seen Basanti Kumari while she was grazing goats. This witness further stated at para 22 of his cross-examination that the dead body was recovered in his presence and at the time of recovery of dead body, Daroga and appellant were present there.

17. PW-6, Kedar Prasad, claims that on the alleged date of occurrence, he had seen the appellant taking away goats of PW-2 and when he inquired from the appellant, the appellant fled away from there leaving behind the goats. This witness further stated that PW-2, PW-5 and Nazir etc also came there and chased the appellant but appellant managed to escape from there. This witness further claimed that after six days of the aforesaid occurrence, the appellant was caught by villagers of Dighiya Village and he was brought to police station. This witness claimed that he and others went to police station and identified the appellant, who was caught by police in connection with another theft. This witness further stated that when police inquired from the appellant, appellant confessed before the police that he had committed the murder of deceased Basanti Kumari and had thrown her dead body



near bamboo clumps and dagger was thrown in a paddy field of Hatim Khan. This witness further stated that he along with others went to the place of occurrence and in presence of the appellant dead body and dagger were recovered. This witness further admitted that after six days of the alleged occurrence, his statement was recorded by the police. At para -17 of his cross-examination, this witness admitted that Daroga had disclosed to him and others that the appellant confessed his guilt. This witness further admitted at para -19 of his cross-examination that when police came at his village, the dead body was searched and after recovery of dead body, the statement was recorded. This witness also admitted at para-20 of the cross-examination that the appellant was well known to him from before. This witness further admitted at para- 21 of his cross-examination that when SANHA was given in the police station, the name of the appellant was not mentioned in the said SANHA.

18. PW-7 is a doctor, who did postmortem examination of deceased. This witness found that the body was completely decomposed. Moreover, the death of deceased Basanti Kumari is not in dispute because the appellant has never challenged the death of deceased as well as recovery of dead body.



19. PW-8, Jhagaru Mahto, also claimed that having heard the noise of PW-6, he went there but appellant managed to escape from there. This witness further claimed that after the occurrence, the appellant was caught by police and brought to police station where he as well as others went there and identified the appellant. This witness further stated that the appellant confessed before the police that having killed the deceased Basanti Kumari, he had thrown her dead body in a ditch and thereafter the appellant was brought to that place by the police and dead body of deceased was recovered from the ditch in decomposed state. At para -3 of his cross-examination this witness stated that he came to know about the apprehension of the appellant from police. This witness stated that having heard the noise of PW-6, when he went to the place of occurrence, PW-6 disclosed the name of appellant who was taking away goats of PW-2. This witness further stated that deceased Basanti Kumari was found missing and he as well as others started searching the deceased but deceased could not be traced out.

20. PW-9, Rabindra Sah, also claimed that on the alleged date of occurrence, he saw the appellant taking away goats and appellant was chased by him and others but the appellant managed to escape from there. This witness further stated that after



4 to 5 days of the alleged occurrence, the dead body of Basanti Kumari was recovered and on the basis of confessional statement made by the appellant before police, the dead body of deceased was recovered near a bamboo clumps. This witness proved his signature on the seizure list which was prepared by PW-10 in respect of recovery of dead body of deceased. This witness claimed that he had made statement before the police that the dead body of the deceased was recovered in his presence.

21. PW-10, Surendra Prasad Singh, was the then S.I of Sitamarhi Town. This witness claims that on 30.10.1989, Chokidar Ram Chander Rout gave information to him that the dead body of daughter of Lalu Mahto was lying in Sareh and several persons were assembled there. PW-10 claimed that having got the aforesaid information, he went there and recorded the statement of PW-2 and after that formal FIR was drawn up. This witness further stated at Para 9 of his examination-in-chief that the appellant confessed his guilt before him disclosing the place where the dagger, used in the crime, was thrown and after that the appellant took him (PW-2) to the paddy field of Hatim Khan from where the dagger was recovered. PW-10 stated that no blood stain was found on the recovered seized dagger as the blood stain was washed off due to rain. This witness stated that he prepared seizure list of



recovered dagger in presence of the witnesses and kept the seized dagger at Maalkhana. This witness admitted at Para 12 of his cross-examination that Bindeshwari (SI) was posted at Bairiya Police Station at the time of alleged occurrence. This witness admitted at Para 14 of his cross-examination that he had not registered any SANHA in respect of present occurrence and the appellant was brought before him by villagers. This witness further admitted that before recording the fardbeyan, he had not got information of the present occurrence at police station and when he was at Sadwanpur Village, Chokidar Ramchandra Rout gave information to him about the recovery of dead body of the deceased. He further stated that he had recorded the statement of Ramchandra Rout but he had not made entry in station diary about the information given by Ramchandra Rout. This witness further stated that Ramchandra Rout disclosed that the dead body was recovered by the villagers. This witness further stated at para- 17 of his cross-examination that Ramchandra Rout gave information to him regarding recovery of dead body as there was no senior police official at the police station. This witness admitted that prosecution witnesses of the present case had seen the appellant while he was at police station in connection with another case. This witness further admitted at Para-19 of his cross-examination



that after institution of the present case, he went to the place of occurrence but the appellant was not taken by him to the place of occurrence on the aforesaid date. This witness stated that he inspected the place of occurrence and recorded the statement of witnesses. This witness further stated that on the same day, he returned to police station and made inquiry from the appellant and after that he confessed his guilt and he along with the appellant went to place of occurrence and on the basis of disclosure made by the appellant, one dagger was recovered. PW-10 at Para- 23 of his cross examination admitted that witness Jairam Prasad had not claimed before him that the appellant had confessed his guilt in his presence.

22. PW-11 is biological father of deceased. This witness claimed that having got information about recovery of dead body of his daughter, he went there and identified the dead body of his daughter.

23. On perusal of the evidences available on the record, it is obvious that the prosecution witnesses claimed that one day prior to the alleged occurrence, the appellant was seen near the place of occurrence and furthermore, on the alleged date of occurrence, the appellant was seen taking away the goats of PW-2 and furthermore, the appellant confessed his guilt before the PW-



10 in presence of prosecution witnesses and on the basis of his confessional statement, the dead body of deceased as well as dagger, said to be used in the occurrence, were recovered. It is also obvious that on the basis of aforesaid circumstances, prosecution claimed the conviction of the appellant and the learned trial court having relied upon the aforesaid circumstances passed the impugned judgment of conviction. Now, it is to be seen as to whether the prosecution succeeded to prove the complete chain of circumstances or not, and as to whether, the above stated circumstances are sufficient to prove the guilt of the appellant.

24. According to prosecution case, it was PW-6 who saw the appellant taking away the goats of PW-2 and he along with other witnesses chased the appellant. However, there is nothing on the record to show that any information regarding the aforesaid occurrence was given to police. No doubt, some witnesses claimed that information regarding missing of deceased Basanti Kumari was given to police on the next day of the occurrence but the name of appellant was not disclosed in the aforesaid information. It is pertinent to note here that almost all the material prosecution witnesses admitted that the appellant was known to them from before and it is surprising enough that when they saw the appellant taking away the goats of PW-2 and they also noticed that deceased



Basanti Kumari was missing, even then, the name of the appellant was not mentioned in the information given to police regarding missing of Basanti Kumari.

25. PW-3, Chandi Sah, PW-4 Hridya Narayan Prasad, PW-5 Jairam Prasad, PW-6 Kedar Prasad, PW-8, Jhagaru Mahto and PW-9 Rabindra Sah claimed that the appellant had confessed his guilt before the police and on the basis of his confessional statement, the dead body of deceased as well as dagger said to be used in the alleged crime, were recovered but PW-10 stated that he got information regarding the recovery of dead body of deceased from a Chokidar and having got the aforesaid information, he went to the place of occurrence. PW-10 further admitted that the dead body of deceased was searched and recovered by the villagers. PW-10 has, nowhere, stated that on the basis of confessional statement of appellant, the dead body of deceased was recovered, therefore, the aforesaid claim of prosecution witnesses appears to be doubtful and it is very difficult to believe that the dead body of deceased was recovered on the basis of confessional statement made by the appellant before the police as well as before the aforesaid prosecution witnesses. However, PW-10 claimed that the dagger which was used in committing the murder of deceased was recovered from a paddy field on the basis of confessional



statement made by the appellant. Admittedly, no blood stain was found on the aforesaid dagger. Although PW-10 tried to explain as to why the blood stain was not found on the dagger saying that the blood stain was washed off due to water of rain. However, it is admitted position that the recovered seized dagger was not sent to forensic science laboratory for chemical examination nor the aforesaid dagger was produced before the court. Therefore, in absence of blood stain on the aforesaid dagger as well as in absence of any report of forensic science laboratory, it is very difficult to rely on this fact that the aforesaid dagger was used in committing the murder of the deceased because except the so-called confessional statement of appellant, there is nothing on the record to show that the seized dagger was used in committing the murder of the deceased. Moreover, even if, the aforesaid confessional statement of appellant is accepted to be true for sake of convenience, then also, only the fact of recovery of dagger can be taken in evidence and mere recovery of dagger is not sufficient to prove that the said dagger had been used for committing the murder of deceased. In our view, the prosecution could not succeed to prove that the seized dagger was used in committing the murder of the deceased and, therefore, in the aforesaid circumstances, only on the basis of recovery of dagger, it can not



be said that the appellant had committed the murder of the deceased.

26. On the basis of aforesaid discussions, we find that the prosecution failed to prove the complete chain of circumstances to show the guilt of the appellant and we also noticed that link of chain of circumstances are missing and only on the basis of recovery of a dagger, it is not safe to convict the appellant for the murder of deceased.

27. Accordingly, in the aforesaid circumstances, we have no option except to set aside the impugned judgment of conviction and sentence order and accordingly, the impugned judgment of conviction and sentence order are, hereby, set aside. The appellant is acquitted from the charges. He is on bail. He is discharged from the liabilities of bail bonds. Copy of first and last page of this judgment, be handed over to learned amicus curiae so that he may claim his remuneration from competent authority.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

N.K/-

AFR/NAFR	NAFR
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