

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.189 of 2013**

Arising Out of PS. Case No.-133 Year-2010 Thana- BAIKUNTHPUR District- Gopalganj

Surenbra Rai S/o Jainath Rai R/o Village-Sanwalia, P.S. Baikunthpur, Distt.-  
Gopalganj

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

|                     |   |                            |
|---------------------|---|----------------------------|
| For the Appellant/s | : | Mr. Ajay Kumar Thakur, Adv |
|                     |   | Mr. Rananjay Kumar, Adv    |
| For the State       | : | Mr. Ajay Mishra, (A.P.P.)  |

**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**

**And**

**HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)**

**Date : 08-03-2019**

1. Heard Mr. Ajay Kumar Thakur learned counsel assisted by Mr. Rananjay Kumar learned counsel for the appellant and Mr. Ajay Mishra learned Addl. Public Prosecutor on this criminal appeal.

2. This criminal appeal has been preferred against the judgment and order of conviction dated 21.01.2013 and order of sentence dated 24.01.2013 passed by Adhoc Additional Sessions Judge-I, Gopalganj in Sessions Trial No. 207 of 2011 / 46 of 2011 arising out of Baikunthpur P.S. Case No. 133 of 2010 corresponding to Complaint Case No. 2496/2010 whereby the learned trial court convicted the accused Surendra Rai for the



offence punishable under Sections 302 and 201 of the Indian Penal Code and sentenced him to undergo life imprisonment and also slapped him with a fine of Rs. 5000/- and in default of payment of fine to further undergo R.I. for six months under Section 302 of the Indian Penal Code and further sentenced him to undergo R.I. for five years under Section 201 of the Indian Penal Code. All the sentence were directed to run concurrently.

3. The factual matrix of the case is that Baikunthpur P.S. Case No. 133 of 2010 was instituted under Sections 302, 201 of the Indian Penal Code on the basis of complaint petition no. 2496/2010 lodged by Deo Kumari Devi @ Kumari Devi W/o Bharat Rai against the accused Surendra Rai on 04.09.2010 which was sent to the P.S. Baikunthpur under Section 156(3) Cr.P.C. for institution and investigation of the case. The aforesaid complaint petition was filed with the allegation, in succinct that marriage of daughter of the informant, namely, Gita Devi was performed with accused Surendra Rai one year back. Subsequently, she learnt that the accused had deserted her first wife. Behaviour of the accused was not good against her daughter and her daughter always used to make complain against him. Three days preceding to the occurrence, accused Surendra Rai dropped Gita Devi at her



house and asked her to arrive at the canal bridge at 08:00 PM, where he would call a sorcerer to facilitate giving birth to a male child. He warned her not to disclose the said fact to anyone and come alone there. In the evening, her daughter divulged her that her husband called her at canal bridge alone, but she is scaring, so she also accompanied her daughter, but the accused Surendra Rai did not arrive at the aforesaid place. Then after waiting for a long, they regressed to their house. After couple of days, Surendra Rai arrived at her house and asked her daughter about reason of not arriving at the aforesaid place on the fixed date. Whereupon they divulged him that they had arrived there and after waiting him for long, they had regressed to their house, then he kept mum. Further allegation is that on the following day, Surendra Rai slept with her daughter in a room and in the morning he started making hulla that her daughter Gita had stepped out of the house for defecation but she did not regress. Then the villagers started making search of her daughter and found her dead body in the canal located across the railway track on the southern side of the village with her hands tied on the back and nose and mouth bleeding. Witnessing the dead body of her daughter, the informant fell senseless, then the accused Surendra Rai took away the dead body to his village



and cremated it. She has claimed that the accused Surendra Rai has committed murder of her daughter and disposed off her dead body. She has also claimed that the information of the occurrence was given at the P.S., but the S.I. did not arrive at the place of occurrence and lodged the case despite giving assurance, then she filed the complaint petition before the court which was forwarded to the P.S. Baikunthpur under Section 156(3) Cr.P.C. on 14.09.2010.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the accused Surendra Rai under Sections 302 and 201 of the Indian Penal Code.

5. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions, and after commitment and on transfer finally the case came in seisin of the learned Adhoc Additional Sessions Judge-I, Gopalganj for trial.

6. Charge against the accused Surendra Rai was framed under Sections 302 and 201 of the Indian Penal Code. Charge was read over and explained to him by the court to which he pleaded not guilty and claimed to be tried.



7. To substantiate its case, in ocular evidence, the prosecution has examined altogether seven prosecution witnesses namely, Dip Lal Rai, who happens to be uncle of the deceased as PW-1, Birendra Rai, who happens to be cousin brother of the deceased and complaint named witness as PW-2, Bhim Mahto, who happens to be neighbour of the deceased and complaint named witness as PW-3, Bharat Rai, who happens to be father of the deceased as PW-4, informant Deo Kumari @ Kumari Devi as PW-5, Majister Rai, who happens to be uncle in village relation of the deceased and complaint named witness as PW-6, I.O. Pawarn Prasad Singh as PW-7. The prosecution has also filed and proved some documents by way of documentary evidence in the case.

8. The statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming himself to be innocent. The accused has neither adduced any ocular nor documentary evidence in buttress of his case.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.



**10.** Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict has preferred this criminal appeal.

**11.** The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellant beyond all reasonable doubts or not.

**12.** It is submitted by learned counsel for the appellant that there is no eye witness of the occurrence. Virtually, it is a case of circumstantial evidence, but the prosecution has miserably failed to establish any link of circumstances leading to the hypothesis of guilt of the appellant. It is further submitted that there has been inordinate and abnormal delay of seven days in lodging the complaint petition before the court and the prosecution has not given any plausible and convincing explanation for the aforesaid delay. Moreover, PW-6 has clarified the reason for filing the complaint petition by stating in his cross-examination that actually the father of the deceased had given money to the appellant for purchasing vehicle which he did not return back to him after demise of the deceased and the appellant also did not return utensil of the deceased despite Panchayati, the aforesaid complaint case has



been filed by the informant. It is also submitted that the complainant herself has taken U-turn in her statement given before the court from the prosecution case as alleged in the complaint petition. Moreover, there is vital contradiction between the testimony of the witnesses regarding presence of the appellant in the house of the informant in the night of occurrence and taking out the dead body of the deceased from the canal. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellant beyond all reasonable doubt by adducing trustworthy, worth credence and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellant by the learned trial court is liable to be set aside and the appellant is entitled to be acquitted.

**13.** On the other hand, learned APP for the State advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that the informant, who happens to be mother of the deceased has supported the prosecution case of taking the deceased from her house by the appellant in the night of the occurrence, recovery of dead body from the canal at the instance of the appellant and taking away the dead body of her daughter by the appellant to



his village and cremating it as she fell senseless witnessing the dead body of her daughter. Other witnesses have also corroborated the prosecution case and learned trial court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. Informant Deo Kumari @ Kumari Devi examined in the case as PW-5 has stated in her examination-in-chief *inter alia* that in the preceding night of the occurrence, her son-in-law had brought her daughter to her house and he took her daughter at 4:00 AM in the wee hour. She also followed them to some distance, then her son-in-law asked her to return back and he would regress getting her daughter examined by the sorcerer. Then she regressed to her house. Thereafter, her son-in-law returned alone and on quizzing, he divulged that Gita is coming soon, but her daughter did not regress to her house. Then they started making search of her. Her son-in-law divulged her that the dead body is lying in the canal and he himself took out the dead body. Her son-in-law had dumped the dead body of her daughter after strangulating. Her mouth and nose were bleeding. From perusal of the aforesaid statement of



the informant, it appears that she has given statement in quite contradiction to the prosecution case as adverted by her in her complaint petition as in the complaint petition, she has stated that on the following day, her son-in-law slept with Gita Devi in a room and in the morning, he made hulla that Gita had gone out of the house for defecation, but she did not regress. Then her villagers made search of Gita and found her dead body in the canal. Thus, the informant has made U-turn in the court from her statement made by her in her complaint petition. Though, the informant in her examination-in-chief has stated that the appellant slept with her daughter Gita in a room in the night preceding to the occurrence, but in quite contradiction to the aforesaid statement, she has stated in paragraph 16 of her cross-examination that after dropping Gita at her house, her son-in-law left her house. Corroborating the aforesaid statement of the informant, PW-4 (Bharat Rai), who happens to be father of the deceased has stated in paragraph 19 of his cross-examination that Surendra Rai had left for his house on the very date of arrival at his house. Thus, the aforesaid statement of the informant and PW-4 rules out presence of the appellant in their house preceding to the occurrence and taking out the deceased by him in the wee hour on the following morning as alleged by



the informant. Informant in paragraph 12 of her cross-examination has stated that she had not seen strangulating her daughter by the appellant.

**15.** From perusal of testimony of PW-1 (Dip Lal Rai), PW-3 (Bhim Mahato) and PW-4 (Bharat Rai), it appears that though they have made an abortive bid to support the prosecution case, but PW-1 in paragraph 10 of his cross-examination and PW-4 in paragraph 12 of his cross-examination have admitted the factum of giving statement to the I.O. regarding giving information to the in-laws of Gita Devi by the prosecution party and on the said information, arriving her in-laws at her house and taking the dead body of Gita Devi and cremating the same. The I.O. in his cross-examination has also corroborated the factum of giving aforesaid statement by PW-1 and PW-4 in their statement under Section 161 Cr.P.C. before him. PW-4 (Bharat Rai) has also stated that he has given information of death of Gita Devi and finding her dead body to her in-laws after making consultation with the villagers and to avoid his implication in the case. PW-3 (Bhim Mahto) in paragraph 7 of his cross-examination has also admitted that after finding the dead body and taking it to the door of Bharat Rai, information was given to the in-laws of Gita Devi and in-laws



of Gita Devi arriving at the house of informant took away the dead body. The aforesaid statement of PW-1, PW-3 and PW-4 candidly rules out presence of the appellant in the house of the informant in the night preceding to the occurrence and taking the deceased with him in the wee hour on the following morning and also rules out the statement of informant regarding taking out the dead body from the canal by the appellant and complicity of the appellant in the occurrence. Moreover, PW-3 (Bhim Mahto) has stated in paragraph 10 of his cross-examination that he has not given statement before the police and he appears to have given statement before the court for the first time. Hence, it would not be safe to rely upon the testimony of said witness.

**16.** As per the prosecution case as adumbrated in the complaint petition, the motive of the occurrence is that preceding to the marriage of Gita Devi with the appellant, she had performed marriage with another lady and had later on deserted her. But, in quite contradiction to the aforesaid prosecution case, father of the deceased PW-4 (Bharat Rai) has stated in paragraph 1 of his examination-in-chief that Surendra Rai had performed marriage with another girl besides his daughter and that is why he had eliminated his daughter and



dumped his dead body in the canal and PW-3 (Bhim Mahato) has stated in paragraph 1 of his examination-in-chief, the bone of contention is that the appellant Surendra Rai used to torment the deceased as he wants to perform second marriage. Thus, in wake of the aforesaid vital contradiction between the prosecution case and the testimony of the aforesaid two witnesses and testimony of the said witnesses *inter se*, the prosecution has utterly and miserably failed to substantiate the motive behind the occurrence.

17. From perusal of record, it appears that the occurrence is of 27/28.08.2010, but the complaint petition has been filed after inordinate and abnormal delay of seven days i.e. on 04.09.2010. Though in a bid to explain the aforesaid delay in filing the complaint petition, the informant has stated in the complaint petition that the information of the occurrence was given to the P.S., but the S.I. did not arrive at the place of occurrence and lodged the case despite giving assurance rather avoided it. Hence, she filed the complaint petition. But, in her examination-in-chief, she has not even whispered about the aforesaid reason of delay in making the complaint petition. Moreover, she has neither stated in the complaint petition nor in her statement that on not lodging the case by the P.S., she ever



made any complain to the top brass of the police and she has also not filed any affidavit to the said effect with the aforesaid complaint petition. Thus, the prosecution has utterly and miserably failed to explain the aforesaid inordinate and abnormal delay in filing the complaint petition which creates serious doubt about the prosecution case.

**18.** As per the complaint petition and witnesses account as the appellant has committed murder of the daughter of the informant and dumped her dead body in the canal the aforesaid complaint petition has been filed against the appellant. But, PW-6 (Majister Rai) has given another reason of filing the complaint petition by giving statement before the I.O. under Section 161 Cr.P.C. that Bharat Rai had given some money to his son-in-law (appellant), but the accused persons did not return back the money and utensil on death of daughter of Bharat Rai despite several Panchaytis, so fed up with the aforesaid reason wife of Bharat Rai has lodged a case against the appellant and others. Albeit, the said witness in paragraphs 11 and 12 of his cross-examination has vented his ignorance and denied giving such statement to the I.O., but the I.O. in paragraph 12 of his cross-examination has corroborated the factum of giving such statement by PW-6 before him.



19. From perusal of record and testimony of witnesses, it appears that it is purely a case of circumstantial evidence as there is no eye witness of the occurrence, but the prosecution has utterly and miserably failed to substantiate even any single link of chain of circumstances leading to the hypothesis of guilt of the appellant.

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

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



conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

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

**22.** Having regard to the facts and circumstances of the case and discussions made by us hereinabove, we find and hold that the prosecution has utterly and miserably failed to



substantiate the prosecution case and bring home the charges levelled against the appellant beyond all reasonable doubt by adducing convincing, cogent, consistent and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial court against the appellant is set aside and the appellant is acquitted of all the charges levelled against him. As the appellant is in custody, he is directed to be released forthwith from the custody, if not wanted in any other case. Accordingly, this Criminal Appeal is allowed.

**(Rakesh Kumar, J)**

**( Prakash Chandra Jaiswal, J)**

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