

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.752 of 2013

Arising Out of PS. Case No.-280 Year-2008 Thana- GHOSI District- Jehanabad

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Shambhu Kumar Arya @ Shambhu Kumar, S/o- Ramashish Yadav @
Ramashish Prasad Yadav, S/o- Jhuman Yadav, Resident of Village -Saristabad
Tola Mani Bigha, P.S. -Ghosi (Okari) , District -Jehanabad.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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with

Criminal Appeal (DB) No. 504 of 2013

Arising Out of PS. Case No.-280 Year-2008 Thana- GHOSI District- Jehanabad

- =====
1. Chinta Devi , W/o- Ramashish Yadav
 2. Usha Devi, W/o- Sikandar Yadav
 3. Pramila Devi, W/o- Ram Babu Yadav
 4. Eklauti Devi, W/o- Chandrashekhar Yadav @ Lal Babu
 5. Pinki Kumari, D/o- Ram Babu Yadav
 6. Guriya Kumari, D/o- Chandra Shekhar Yadav @ Lal Babu
- All are resident Of Village- Saristabad Tola Mani Bigha, P.S.- Ghosi (Okari),
District- Jehanabad.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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with

Criminal Appeal (DB) No. 544 of 2013

Arising Out of PS. Case No.-280 Year-2008 Thana- GHOSI District- Jehanabad

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Kaushlendra Yadav, S/o- Late Nanhku Yadav @ Late Singheshwar Yadav,
R/o Vill.- Uber, P.S.- Ghosi, District- Jehanabad

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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with

Criminal Appeal (DB) No. 560 of 2013

Arising Out of PS. Case No.-280 Year-2008 Thana- GHOSI District- Jehanabad



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1. Ramashish Yadav, S/o - Jhuman Yadav
 2. Ram Babu Yadav, S/o- Ramashish Yadav
 3. Sikandar Yadav, S/o- Ramashish Yadav
 4. Chandrashekhhar Yadav @ Lal Babu, S/o- Ramashish Yadav
- All are resident Of Village- Saristabad Tola Mani Bigha, P.S.- Ghosi (Okari),
District- Jehanabad

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 752 of 2013)

For the Appellant/s : Sri Ashok Kumar Mishra, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

(In Criminal Appeal (DB) No. 504 of 2013)

For the Appellant/s : Sri Sanjay Kumar, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

(In Criminal Appeal (DB) No. 544 of 2013)

For the Appellant/s : Sri Sanjay Kumar, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

(In Criminal Appeal (DB) No. 560 of 2013)

For the Appellant/s : Sri Sanjay Kumar, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 28-01-2019

1. In aforesaid four Appeals twelve appellants were tried together and convicted and sentenced by a common judgment, and as such, all the aforesaid four Appeals were taken up together for hearing and are being disposed of by this common judgment.

2. Sikandar Yadav [appellant no. 3 in Cr. Appeal (D.B.) No. 560 of 2013] and Kaushlendra Yadav [Cr. Appeal (D.B.) No.



544 of 2013] by judgment dated- 29.05.2013 were convicted for commission of offence under Section 302/34 of the Indian Penal Code, 1860 [hereinafter referred to as the “I.P.C.”] and by order dated- 31.05.2013 both were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each. In default in payment of fine they were further directed to undergo rigorous imprisonment for one year. Remaining appellants by judgment dated 29.05.2013 were convicted for offence under Section 302/149 of the I.P.C. and by order dated -31.05.2013 they were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each. In default in payment of fine they were directed to further undergo rigorous imprisonment for one year. The judgment of conviction and sentence was passed by Sri Shailendra Kumar, learned Additional Sessions Judge III, Jehanabad in Sessions Trial No. 79/2010/24/2012 [arising out of Ghosi (Okari O.P.) P.S. Case No. 280 of 2008].

3. Short fact of the case is that on 25.11.2008 at 13.45 Hours (1.45 P.M.) Sub Inspector of Police Sri Madhusudan Singh (P.W. 7), Officer-in-charge of Okari O.P. Ghosi P.S. recorded fardbyan of one Vinay Prasad (P.W. 11). The fardbyan was recorded near the door of Shambhu Kumar , resident of Village - Saistabad Mani Bigha, P.S. - Ghosi (Okari). In the fardbyan



informant disclosed that on 24/25.11.2008 in the night Shambhu Kumar Arya @ Shambhu Kumar [appellant in Cr. Appeal (D.B.) No. 752 of 2013], Ram Babu Yadav @ Chandrabhushan Yadav [appellant no. 2 in Cr. Appeal (D.B.) No. 560 of 2013], Lal Babu @ Chandrashekhar [appellant no. 4 in Cr. Appeal (D.B.) No. 560 of 2013], Sikandar Yadav [appellant no. 3 in Cr. Appeal (D.B.) No. 560 of 2013], Ramashish Yadav [appellant no. 1 in Cr. Appeal (D.B.) No. 560 of 2013], Chinta Devi, Pramila Devi, Usha Devi, Eklauti Devi, Guriya Kumari and Pinki Kumari [all appellants in Cr. Appeal (D.B.) No. 504 of 2013] had killed informant's sister namely: Sanju Devi, aged about twenty three years by way of pressing her neck through chain wrinch. The reason for the occurrence was stated by the informant that her sister- Sanju Devi was married with Shambhu Kumar Arya in the year 2002. His sister since last six months was staying in Mani Bigha. Family member of his brother-in-law with intent to solemnize second marriage of his brother -in-law on 24/25.11.2008 in the night had killed Sanju Devi by pressing her neck through chain wrinch. He stated that information regarding the occurrence was given by villagers of Saistabad Tola Mani Bigha on 25.11.2008 at 10.00 A.M. The said fardbyan was read over to him and after finding it correct he in presence of his brother – Anup Kumar put his



signature. As a witness to the fardbyan Anup Kumar (P.W. 6) also put his signature. On the basis of the said fardbyan on 26.11.2008 at 9.15 A.M. a formal F.I.R. vide Ghosi (Okari) P.S. Case No. 280 of 2008 was registered for the offence under Sections 302/34 of the I.P.C. against eleven appellants except one Kaushlendra Yadav [sole appellant in Cr. Appeal (D.B.) No. 544 of 2013].

4. After investigation, on 24.02.2009 charge sheet was submitted against Sikandar Yadav and Kaushlendra Yadav (who was not named in the F.I.R.) keeping investigation pending against others. Charge -sheet was submitted against two appellants under Section 302/34 of the I.P.C. After submission of charge sheet on 27.03.2009 learned Chief Judicial Magistrate, Jehanabad took cognizance of the offence and the case was committed to the court of Sessions on 10.03.2010 and it was numbered as Sessions Trial No. 87 of 2010. After commitment, on 21.05.2010 charge was jointly framed against Sikandar Yadav and Kaushlendra Yadav under Section 302/34 of the I.P.C. in which they denied the charges and claimed to be tried. Thereafter on 30.11.2009 supplementary charge sheet was submitted against remaining ten appellants under Section 302/34 of the I.P.C. On 14.07.2010 case of remaining ten accused was committed to the court of Sessions and it was numbered as Sessions Trial No. 252 of 2010.



5. Subsequently, on 27.07.2010 joint charge was framed against ten accused persons under Section 302/149 of the I.P.C. which was denied and appellants claimed to be tried. However before commencement of evidence on 12.08.2010 both the trials were amalgamated and thereafter to establish its case on behalf of the prosecution altogether eleven witnesses were examined. Out of eleven witnesses, P.W. 1 (Awadhesh Kumar), P.W. 2 (Mathura Prasad) & P.W. 3 (Rameshwar Prasad) who are co-villagers of the appellants were examined as hearsay witnesses as well as on the point that before the occurrence they deposed as if some days prior to the occurrence the deceased was dropped by the informant's side in the village of the appellants and she remained some time in a temple of the village of the appellants and also in community hall. Thereafter, a Panchayati was held and in Panchayati a decision was taken to allow the deceased to stay in the house of the appellants. P.W. 5 (Kesho Prasad) is a co-villager of the informant, P.W. 6 -Anup Kumar (brother of the informant and deceased) and P.W. 11 (Vinay Prasad) is the informant and brother of the deceased. P.W. 4 -Surendra Prasad (Chaukidar of the Tola Mani Bigha), P.W. 9 (Tulsi Kumar 'Albela') and P.W. 10 (Sarbi Prasad @ Sarveshwar Prasad) since did not support the case were declared hostile. P.W. 8 (Dr. Akhauri Vijay Kumar) on 26.11.2008



was posted in Sadar Hospital, Jehanabad and he conducted post-mortem examination on the dead body of the deceased and P.W. 7 (Madhusudan Singh) is the Investigating Officer of the case.

6. After completion of prosecution evidence, statement of appellants under Section 313 of the Cr.P.C. was recorded on 12.03.2013 in which they denied the charges and claimed to be innocent. Of -course in defence oral evidence was not produced but from the defence side number of documents were got exhibited. Those are:- (1) certified copy of F.I.R. in Ghosi P.S. Case No. 153 of 1998, which was registered against the brother of P.W. 1 (Awadhesh Kumar) from the side of the appellants which was marked as Ext. A, (2) certified copy of F.I.R. in Kako P.S. Case No. 167 of 2002 which was lodged from the appellants' side against the informant's side of the present case regarding kidnapping of appellant - Shambhu Kumar Arya @ Shambhu Kumar for the purposes of marriage which was marked as Ext. A/1, (3) certified copy of F.I.R. of Ghosi P.S. Case No. 158 of 2008 dated 22.07.2008 registered against P.W. 11 (Vinay Prasad), P.W. 6 (Anup Kumar) and another brother of the deceased and it was marked as Ext. A/2 in which it was alleged that the accused persons of the said case had forcibly brought the deceased and intruded into the house of the appellants, (4) Certified copy of



final report in Kako P.S. Case No. 167 of 2002 dated 18.06.2002 which was marked as Ext. B. This is the certified copy of charge sheet submitted in the case which was registered against the informant's side of the present case regarding kidnapping of appellant- Shambhu Kumar Arya, (5) Certified copy of final report in Ghosi (Okari) P.S. Case No. 161 of 2008 dated 28.07.2008 which was marked as Ext. B/1. This is the final report submitted in the case initiated by the deceased against the appellants' side regarding torture and demand of dowry, (6) Certified copy of statement of appellant -Shambhu Kumar Arya @ Shambhu Kumar (appellant) recorded under Section 164 of the Cr.P.C. in Kako P.S. Case No. 167 of 2002 to show that the appellant – Shambhu Kumar Arya @ Shambhu Kumar at the time of forceful alleged marriage was minor and aged about fourteen years and he before the learned Magistrate had stated that he was kidnapped by the informant's side for the purposes of marriage but in any event marriage could not be solemnized. In the meanwhile brothers of the appellant -Shambhu Kumar Arya arrived with villagers and thereafter Police also arrived and appellant /Shambhu Kumar Arya could be saved. This is marked as Ext. C. (7) Original certificate issued by Bihar School Examination Board in favour of Shambhu Kumar Arya to show that his date of birth



was 10.01.1988 and on the date of so called alleged marriage he was about fourteen years old. It was marked as Ext. D (8) Certified copy of order sheet in Matrimonial Case No. 58 of 2008 from order dated 15.09.2008 to 03.12.2008 to show that appellant -Shambhu Kumar Arya @ Shambhu Kumar had already filed a matrimonial case for declaring his marriage with deceased as void. In sum and substance a defence was taken that appellant- Shambhu Kumar Arya's marriage was never legally solemnized with the sister of the informant of the present case rather he was kidnapped and right from the very beginning they were insisting to keep the deceased with him which was never acceded to by the appellants.

7. After referring entire evidence, Sri Sanjay Kumar, learned counsel appearing on behalf of appellants in Cr. Appeal (D.B.) Nos. 504 of 2013, 544 of 2013 & 560 of 2013 as well as Sri Ashok Kumar Mishra, learned counsel appearing on behalf of the sole appellant in Cr. Appeal (D.B.) No. 752 of 2013 have argued that the appellants were required to be granted clean acquittal by the learned trial judge but incorrectly appreciating the evidence the learned trial judge has passed the judgment of conviction and sentence. It has been argued that prosecution in the present case has miserably failed to establish the place of occurrence as well as the time of occurrence. According to learned counsel for the



appellants it is admitted case that in the case there is no eye witness to the occurrence. The prosecution has miserably failed to establish legally solemnization of marriage of the sister of the informant with appellant - Shambhu Kumar Arya @ Shambhu Kumar and since there was no valid marriage, there was no reason to keep the deceased inside the house of the appellants, and as such, there was no occasion for recovery of dead body from the premises of the appellants. To substantiate the argument regarding non establishing of the place of occurrence it has been argued that though prosecution has come out with a case that near the dead body which was found in the so-called straw room of the appellants one chain wrinch was found, during the trial neither seizure list was brought on record nor the material exhibit i.e. chain wrinch was produced whereas the witnesses had stated that in the chain wrinch they had noticed part of skin. It has further been argued that on the one hand witnesses had come out with a case that chain wrinch which was found near the dead body was having pieces of skin, on the neck of deceased during post-mortem examination no injury like scratches or abrasion was found. It has been argued that finding of chain wrinch was introduced to support as if the dead body was found in a particular place. It has also been argued that in the case during trial the



prosecution has not brought on record the inquest report. According to learned counsel for the appellants in such a case bringing on record the inquest report was essential otherwise it was only inquest report which could have indicated that on which place and in which condition and what time dead body was found. According to learned counsel for the appellants three independent witnesses who were hailing from the village of the appellants are P.W. 1 - (Awadhesh Kumar), P.W. 2 (Mathura Prasad) and P.W. 3 (Rameshwar Prasad), however during their evidence the fact has come that all the three aforesaid witnesses were on inimical term with the informant's side and this was the reason that they had come forward to state that deceased before the occurrence was residing in the house of the appellants otherwise those witnesses have admitted that marriage of deceased was forcibly solemnized with appellant- Shambhu Kumar Arya. By way of referring to the evidence of P.W. 5 (Kesho Prasad), P.W. 6 (Anup Kumar) and P.W. 11 /Vinay Prasad (informant) it has been argued that all the three witnesses are completely inconsistent on the point of getting information from the witnesses. P.W. 5 in his cross -examination in paragraph 12 at page no. 36 has stated that regarding the occurrence he got information from Kameshwar Yadav who was not examined by the prosecution. P.W. 6 -Anup Kumar (brother of



the deceased) in his cross- examination in paragraph no. 12 at page no. 42 has stated that he was informed by Fatey Yadav however Fatey Yadav was also not examined. P.W. 11 - Vinay Prasad (informant) in his cross- examination in paragraph no. 33 has stated that he was informed by Dayanand Yadav but Dayanand Yadav too was not examined by the prosecution. Learned counsel for the appellants by way of referring to the evidence of P.W. 5, 6 & 11 highlights on the inconsistency regarding gathering information by those witnesses which is sufficient to establish that their evidences are not credible. It has also been argued that P.W. 5 – Kesho Prasad and P.W. 6 / Anup Kumar had falsely and incorrectly deposed during the evidence as if the deceased was residing in the house of the appellants and dead body was recovered from their premises whereas on attention being drawn to their previous statement as well as evidence of Investigating Officer (P.W. 7) it is established that those facts were never stated by those witnesses during investigation. Meaning thereby that for the first time during the trial they had come out with a case as if the appellants were involved. By way of referring to the evidence of P.W. 8 as well as post- mortem examination report i.e. Ext. 2 it has been argued that time of death so noticed by the doctor during post- mortem examination also belies the story of the prosecution



regarding the time of occurrence. It has been argued that it is consistent case of the prosecution that occurrence had taken place in night in between 24/25.11.2008 whereas post-mortem examination was conducted at 9.20 A.M. on 26.11.2008. In post-mortem examination doctor had noticed rigor mortis on the person of the deceased and he recorded specific finding that death had occurred within twenty four hours. According to learned counsel for the appellants if death had occurred within twenty four hours from the time of post-mortem examination certainly the prosecution case regarding occurrence which had allegedly taken place on 24/25.11.2008 itself falsifies. On aforesaid grounds it has been argued that judgment of conviction and sentence is liable to be set aside.

8. Sri Ajay Mishra, learned Additional Public Prosecutor in all the Appeals opposing has argued that in a case of recovery of dead body from the premises of appellants it hardly matters whether prosecution has been able to establish the case of solemnization of marriage of deceased with appellant – Shambhu Kumar Arya @ Shambhu Kumar or not. He further submits that in view of the provision contained in Section 106 of the Evidence Act the onus was on the defence to disapprove regarding non -recovery of the dead body. He submits that prosecution has established its



case of recovery of dead body (unnatural death) from the premises of appellants, and as such, the learned trial judge has rightly passed the judgment of conviction and sentence.

9. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record and after going through the same *prima facie* we are of the opinion that prosecution has not been able to establish its case beyond all reasonable doubts and it is a fit case for interference with the judgment of conviction and sentence however before proceeding it would be necessary to cursorily discuss the evidence.

10. P.W. 1 (Awadhesh Kumar) is the co-villager of the appellants and in his evidence in paragraph no. 1 he stated that marriage of Shambhu Kumar Arya (appellant) with Sanju Devi (deceased) was solemnized about 5-6 years back. Marriage of Sambhu Kumar Arya @ Shambhu Kumar with Sanju Devi was solemnized after kidnapping. Since about 5-6 months back the deceased was residing in the house of Ramashish Yadav [appellant no. 1 in Cr. Appeal (D.B.) No. 560 of 2013]. For keeping the girl in the house of Ramashish a Panchayati was held in the village. In paragraph no. 3 he further deposed that on 25.11.2008 at 09-10 A.M. while he came out from his house, Chaukidar – Surendra Prasad (P.W. 4) informed him that daughter -in- law of



Ramashish had died. In paragraph no. 6 of his examination – in – chief this witness has stated that subsequently he came to know that **family members of Sanju Devi (deceased) had killed her.** In his cross- examination in paragraph no. 12 he admitted his relationship with one Tulsi Ji and in paragraph no. 8 of his cross-examination he accepts that in the year 1998 Lal Babu Yadav [appellant no. 4 in Cr. Appeal (D.B.) No. 560 of 2013] had lodged a case against Tulsi Yadav. Again in paragraph no. 12 he accepted that Tulsi Ji is his cousin brother. Of -course he was given suggestion that due to old animosity he had given evidence, he denied the same. On examination of the evidence of P.W. 1 it is evident that he was on inimical term with the appellants' side and this fact has also come firstly that marriage of Shambhu with deceased was solemnized in the year 2002 by way of kidnapping and secondly he himself in paragraph 6 of his examination- in- chief has stated that later on he came to know that deceased was done to death by his own family members.

11. P.W. 2 (Mathura Prasad) who is also a co-villager of the appellants has stated to some extent like P.W. 1 but in paragraph no. 10 of his cross- examination he has admitted that since the year 1998 cases were going on in between his family and appellants. In paragraph 11 of his cross -examination he



further accepts that at the time of marriage of Shambhu he was about 16-17 years old and he was student of Class IX. In paragraph 14 of his cross- examination he has admitted that his statement was not recorded by Daroga Ji rather he said that his statement was recorded by S.P. Sahab. Meaning thereby that his statement under Section 161 of the Cr.P.C. was not recorded and as such it is difficult to place reliance on the evidence of this witness.

12. P.W. 3 (Rameshwar Prasad) is yet another co-villager of the appellants. In paragraph no. 1 of his evidence he stated that 4- 5 years back after kidnapping marriage of Shambhu with Sanju was solemnized. After marriage with the intervention of Panchayat Shambhu started to allow the deceased to live. Sanju was residing since last six months from the date of occurrence. Sanju was earlier staying near a well opposite the road of the village and she stayed in Mahadeo temple for about eight days. He again stated that by force marriage of Shambhu was solemnized with the deceased. In paragraph no. 2 of his evidence he introduced a new story that due to non- fulfillment of dowry amount the deceased was not being allowed to stay in her matrimonial house. In paragraph no. 7 of his examination -in-chief he further stated that he was having knowledge that notice was issued to Sanju for her appearance in court which was issued prior



to the occurrence. In paragraph 15 of cross- examination he stated that Sanju was staying in a room which was meant for keeping straw and foodgrains. In paragraph 20 of his cross examination he further stated that while Sanju was staying outside the village he was also using to provide meal to her. On examination of his evidence in paragraph -21 of the cross examination it is evident that terrace of the house of this witness was encroached over the land of appellants' side and in paragraph no. 24 he has further denied the suggestion that after the murder of Sanju, accused persons had fled away then he erected the terrace encroaching upon the land of the appellants. This suggests that this witness was also on inimical term with the appellants and further on examination of paragraph no. 12 of his cross examination it is evident that his statement was not recorded by Police during investigation. Meaning thereby that whatever he had stated that was stated during the trial for the first time and as such there is no need to place reliance on his evidence.

13. P.W. 5 (Kesho Prasad) though in his evidence he elaborately stated showing involvement of the appellants but when his attention was drawn to his previous statement as well as at the time of evidence of the Investigating Officer this fact has come that such statement was not given by him during investigation, and



as such, during the trial itself for first time he has come out with a case showing involvement of the appellants.

14. P.W. 6 -Anup Kumar (brother of the informant) in his evidence has stated that he had put his signature on the fardbyan which was marked as Ext. 1. Though in paragraph 1 of his evidence he deposed like other witnesses but in paragraph no. 3 of cross examination he accepted that he had not stated many thing before the Police during investigation and in the evidence of Investigating Officer (P.W. 7) this fact has also come which was referred in paragraph no. 22 of the evidence of P.W. 7. In paragraph 6 of his cross examination he stated that he was an accused in the case of kidnapping of Shambhu Kumar (appellant) and he had also gone to jail along with his father in the said case.

15. P.W. 11 (Vinay Prasad) one of the brothers of the deceased is the informant of the case. In his evidence he has disclosed the fact which was stated by him in his fardbyan. However in paragraph no. 6 of his evidence he introduced Kaushlendra Yadav [appellant in Cr. Appeal (D.B.) No. 544 of 2013] whereas prior to his evidence neither in the fardbyan nor any of the witnesses had named Kaushlendra Yadav as one of the accused in the present case. In paragraph no. 13 of his evidence he stated that accused persons had initiated a case against his sister



relating to marriage dispute. The case was lodged by Shambhu Kumar Arya (appellant). The said marriage dispute was filed against his sister prior to 2 ½ months of the occurrence. He stated that he came to know about the said case after he received notice. In paragraph no. 15 of his examination – in- chief he stated that after receipt of notice he appeared in Family Court and he got an order from the Family Court for producing his sister in court. This suggests that though marriage of deceased was solemnized in the year 2002 just prior to the date of occurrence the deceased was residing with this witness i.e. the informant. In paragraph 24 of his cross -examination he deposed that while marriage of Shambhu Kumar Arya was solemnized he was aged about nineteen years. This statement also goes to suggest that this witness is not reliable considering the fact that in the year 2002 itself while kidnapping case was going on statement of Shambhu Kumar (appellant) was recorded under Section 164 of the Cr.P.C. in which he disclosed his age as fourteen years. The said statement recorded under Section 164 of the Cr.P.C. was got exhibited as Ext. C. On perusal of Ext. C it is evident that the learned Magistrate had recorded his statement and prior to recording statement had tested the mental status of the witness as to whether he was in a position to understand his evidence or not. Only thereafter his statement was



recorded in which appellant – Shambhu Kumar Arya @ Shambhu Kumar had stated as to how he was kidnapped. Besides this on record there is matriculation certificate i.e. Ext. D which is certificate issued by the Bihar School Examination Board suggesting the age and date of birth as 10.01.1988 and as such the appellant /Shambhu Kumar Arya @ Shambhu Kumar on the date of so called marriage was minor and aged about fourteen year even then during the trial this P.W. 11 had dared to say the age of the appellant- Shambhu Kumar Arya @ Shambhu Kumar on the date of his marriage as nineteen years. In paragraph 26 of his cross examination he stated that he was not aware as to whether on the date of marriage the appellant- Shambhu Kumar was recovered by the Police from the house of this witness. In paragraph 28 of cross-examination he accepted that a case was lodged against him and his family regarding kidnapping which was still pending in the court. In paragraph no. 29 of his cross- examination this witness stated that Lal Babu @ Chandrashekhar (appellant) had lodged one case against him and his family members regarding forceful entry of Sanju Devi in his house. In paragraph no. 31 of his cross examination he deposed that Shambhu Kumar Arya (appellant) had lodged a case in Family Court which was numbered as Case No. 58 of 2008. In paragraph 32 of cross -examination he further



accepted that his sister had filed a case regarding torture due to non- fulfillment of dowry which was found to be false by the Police during investigation however he denied the suggestion that Police after investigation had recommended for initiation of prosecution against Sanju Devi for the offence under Section 182 / 211 of the I.P.C. This witness in paragraph 33 of his cross-examination stated that regarding the occurrence he was informed by Dayanand Yadav however Dayanand Yadav was not examined as a witness. Similarly other witnesses have stated regarding providing information regarding the occurrence by other persons though they too were not examined. Of -course in paragraph 26 of his cross -examination this witness had stated that he was not knowing as to whether on the date of marriage Shambhu was recovered from his house but in paragraph 48 of his cross -examination he stated that the day on which Shambhu Kumar Arya (appellant) was recovered from the house of this witness his sister was in his house. Meaning thereby that even during evidence he was not hesitant in making completely false and contradictory statement. He further accepted that on that day Police had arrested his father and his brother. In his cross examination in paragraph 50 P.W. 11 stated that Ruksaddi of his sister was held on 13.06.2008 and thereafter his sister reached Saistabad however the accused



persons after assaulting ousted her and she remained outside the house for about four days. During the said period she stayed in Shiv Mandir and also in the Dallan of Ramashish Yadav [appellant in Cr. Appeal (D.B.) No. 560 of 2013]. During this intervening period she also stayed in Community Hall. However, in paragraph 52 of cross- examination he accepted that even during those period he did not bother to get back his sister. This also appears to be quite unnatural. Again in paragraph 55 of cross -examination this witness has stated that accused persons were having two houses. One house was on the Eastern side of the road and another house was on the Western side. In the house situated on Western side cattles were being kept and also there was diesel and electric pump. The room in which dead body of his sister was found there was no cot. He denied the suggestion that they themselves had ousted their sister but she was not accepted by the appellants. He denied the suggestion that after receipt of notice in the case relating to dissolution of marriage her sister had committed suicide. On examination of overall evidence of P.W. 11 it is difficult to come to conclusion that dead body was actually found in the premises of the appellants particularly in view of other evidences i.e. the evidence of the Investigating Officer. The Investigating Officer – Madhusudan Singh was examined as P.W.



7. On 25.11.2008 he was posted as Officer -in- charge in Okari O.P. within the Police Station of Ghosi. Of- course this witness had tried to describe the place of occurrence as if the straw room of the house of the appellants but the Investigating Officer has not bothered to bring on record either the so- called seizure list relating to finding of chain wrinch which was shown to be found near the dead body nor inquest report has been brought on record. The Investigating Officer himself has admitted that appellant had earlier filed a complaint case against him. On going through entire evidence of the Investigating Officer it would be difficult to finally come to conclusion that actual place of occurrence was the premises of the appellants. Meaning thereby that prosecution has miserably failed to establish the place of occurrence.

16. The dead body was examined by Dr. Akhauri Vijay Kumar (P.W. 8) . P.W. 8 on 26.11.2008 was posted in the Sadar Hospital, Jehanabad and on the said date he conducted post -mortem examination on the dead body of deceased and noticed the following facts:-

“(A) On external examination:-

(i) rigor mortis present.

(ii) Bruise 7”x1/2” on anterior and lateral aspect of upper part of neck above thyroid cartilage.

(iii) Bruise 1/2” x 1/4” on both knee.

(iv) diffuse swelling on right arm

(B) On dissection:-

(i) Neck: - Echymosis underneath the mark on neck with fracture of hyoid bone.



(ii) Chest – heart- Right cardiac chamber full, left cardiac chamber empty. Lung – both right and left lung intact and congested.

(iii) Abdomen:- Stomach digested material, liver, spleen and kidney intact and congested, urinary bladder – empty, uterus non- gravid

(iv) cause of death: - Asphyxia due to strangulation.

(v) time since death:- within 24 hours.

This witness stated that the post -mortem report was in his writing and signature and it was marked as Ext. 2. On examination of the evidence of P.W. 8 as well as on going through post- mortem examination report one thing is evident that death had occurred within twenty four hours from the time of post -mortem examination. The post -mortem examination on the dead body had commenced at 9.20 A.M. on 26.11.2008. Meaning thereby that after about 36 hours of the alleged time of occurrence even then the doctor had found rigor mortis on the person of the deceased. Besides this, in column no. 5 time since death has been mentioned “**within twenty four hours**”. Neither rigor mortis nor the time of death since post- mortem examination supports the prosecution case regarding time and date of occurrence. This also creates serious doubt on the prosecution case. Of-course prosecution consistently has come out with a case that near the dead body one chain wrinch was found over which there were pieces of skin, but during post -mortem examination on neck no such scratches or cut mark was noticed, and as such, introduction



of chain wrinch appears to be highly doubtful. Besides this, we have also minutely examined the documents which were got exhibited from the defence side. Those documents establishes that the deceased was never legally married with the appellant – Shambhu Kumar Arya @ Shambhu Kumar and as such there was no reason for staying of the deceased with the family of the appellants' side. Moreover, prosecution in this case has not specifically established the place of occurrence. Time of occurrence also appears to be doubtful keeping in view the evidence of P.W. 8 as well as post -mortem examination report. The witnesses who had come forward to depose against the appellants, who were co-villagers of the appellants, were on inimical term with the appellants as well as there are many inconsistencies, and as such, no much reliance can be placed on their evidence. P.W. 5 & 6 though during investigation had not stated any fact relating to occurrence during the trial they had come out with a case which can safely be termed as development during the trial, which may not be relied upon.

17. In view of the aforesaid facts and circumstances, we are of the considered opinion that the learned trial judge has incorrectly passed the judgment of conviction and sentence, and as such, judgment of conviction dated : 29.05.2013 and sentence



dated- 31.05.2013 passed by Sri Shailendra Kumar, learned Additional Sessions Judge – III, Jehanabad in Sessions Trial No. 79/2010/24/2012 & 252/2010/212/2010 [arising out of Ghosi (Okari O.P.) P.S. Case No. 280 of 2008 , G.R. Case No. 2400 of 2008] is hereby set aside and all the aforesaid four Appeals are allowed and all the appellants are acquitted from all charges. Since appellant -Shambhu Kumar Arya @ Shambhu Kumar [Cr. Appeal (D.B.) No. 752 of 2013] is in jail and judgment of conviction and sentence has been set aside, he is directed to be released forthwith, if not wanted in any other case. Other appellants are on bail and they are hereby discharged from the liabilities of their bail bonds.

(Rakesh Kumar, J)

(Prakash Chandra Jaiswal, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05-02 -2019
Transmission Date	05-02 - 2019

