

IN THE HIGH COURT OF JUDICATURE AT PATNA
DEATH REFERENCE No.1 of 2021

Arising Out of PS. Case No.-150 Year-2018 Thana- DALSINGHSARAI District- Samastipur

The State of Bihar

... .. Petitioner

Versus

Ram Lal Mahto, son of Ram Bharos Mahto, resident of vilalge-Pandh, P.S.-
Dalsinghsarai, District-Samastipur.

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 140 of 2021

Arising Out of PS. Case No.-150 Year-2018 Thana- DALSINGHSARAI District- Samastipur

Ram Lal Mahto, son of Ram Bharos Mahto, resident of vilalge-Pandh, P.S.-
Dalsinghsarai, District-Samastipur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In DEATH REFERENCE No. 1 of 2021)

For the Petitioner : xxxxx

For the Respondent : Mr. Kumar Kaushik, Amicus Curiae

(In CRIMINAL APPEAL (DB) No. 140 of 2021)

For the Appellant : Mr. Subodh Prasad, Advocate

Mr. Kapil Deo Singh, Advocate

For the Respondent : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 12-01-2022

The sole appellant has been held guilty in Tr.
No.154 of 2020, R.G. No.535 of 2018 arising out of
Dalsingsarai P.S. Case No.150 of 2018 by the learned
Additional Sessions Judge-6th-cum-Special Court (POCSO)



(for the sake of convenience hereinafter referred to as ‘Trial Court’) for the offences punishable under Sections 302, 376-A(2) of the Indian Penal Code (for short ‘IPC’) and Section 6 of the Protection of Children from Sexual Offences Act (for short ‘POCSO Act’) vide judgment dated 16.12.2020.

2. Consequently, the Trial Court has awarded a composite sentence of death for all the three offences under which he has been convicted. The death sentence awarded by the Trial Court is subject to confirmation by the High Court.

3. The reference made by the Trial Court under Section 366 of the Code of Criminal Procedure (for short ‘CrPC’) has been registered as Death Reference No.1 of 2021.

4. The appellant has separately challenged his conviction and sentence imposed by the Trial Court vide Criminal Appeal (DB) No.140 of 2021.

5. The appeal and the reference have been heard together and are being disposed of by a common judgment.

6. The prosecution story, in brief, as per the *fardbeyan* of the informant recorded by an Assistant Sub Inspector of Police (for short ‘ASI’), namely, Koiliming of Dalsingsarai Police Station on 03.06.2018 at 7:15 a.m. at village-Pand is that she had gone to her parent’s village along



with her daughter aged about three years and a son aged about one and a half year. On 02.06.2018, at about 6:00 p.m., when her daughter along with her maternal uncle Amarjeet aged around seven years was grazing goat in the field of one Chandra Bhushan Rai, the appellant Ram Lal Mahto arrived there and took her away in his lap. The said incident was reported to her by her brother Amarjeet when she was at her house. On receipt of the information, she along with her other family members and villagers started searching for her daughter. When her whereabouts could not be known, they went to the house of the appellant Ram Lal Mahto. There, they came to know that Ram Lal Mahto had taken the victim towards southern direction. She along with others kept on searching for her missing daughter throughout the night but could not find her. Next morning, at about 5:00 a.m., when she was sitting at her house, some villagers came and informed that the dead body of her daughter was lying in the field of one Md. Taiyab Mian. On receipt of such information, when she along with her family members rushed to the place of occurrence, she found her daughter dead in the field of Taiyab Mian and her genitalia was badly injured. The informant alleged that the appellant Ram Lal Mahto killed her minor daughter and dumped her body in the field of Taiyab



Mian after sexually assaulting her.

7. The aforementioned *fardbeyan* of the informant led to the institution of the Dalsingsarai Police Station Case No.150 of 2018 dated 03.06.2018 under Sections 376, 302 and 201 of the IPC and Sections 4 and 6 of the POCSO Act by Naresh Paswan, Station House Officer (for short 'SHO') Dalsingsarai Police Station and the investigation was handed over to one Braj Kishore Singh (P.W.6), a Sub Inspector of Police.

8. On completion of investigation, one Sunil Kumar Singh (P.W.7), the second Investigating Officer of the case, submitted charge-sheet against the appellant vide charge-sheet No.157 of 2018 finding the prosecution case to be true for the offences punishable under Sections 376-A (2), 302 and 201 of the IPC and Sections 4 and 6 of the POCSO Act.

9. After going through the report submitted by the police under Section 173 of the CrPC as also the other relevant documents, the Trial Court took cognizance of the offences punishable under Sections 302 and 201 of the IPC and Sections 4 and 6 of the POCSO Act and summoned the appellant to face trial.

10. On 20.08.2018, the Trial Court explained charges



under Sections 376 and 302 of the IPC and Section 6 of the POCSO Act to the appellant to which he pleaded not guilty and claimed to be tried.

11. During trial, the prosecution examined eight witnesses, namely, Shrawan Kumar Mahto (P.W.1), Sangeeta Kumari (P.W.2), Nirmala Devi (P.W.3), Amarjeet Kumar (P.W.4), Ram Sudeen Rai (P.W.5), Braj Kishore Singh (P.W.6) Sunil Kumar (P.W.7) and Dr. Jaikant Paswan (P.W.8).

12. Apart from the oral evidence, the prosecution proved the following documents in order to prove the charges:

Sl. No.	Exhibit	List of documents
1.	1	Statement of Shrawan Kumar Mahto under Section 164 CrPC
2.	2	Signature of the informant on the <i>fardbeyan</i> .
3.	2/1	Statement of the witness Ram Sudeen Rai on the <i>fardbeyan</i> .
4.	3	Statement of Amarjeet Kumar under Section 164 CrPC.
5.	4	Postmortem report.
6.	5	FSL report

13. **Sangita Kumari (P.W.2)** corroborated her statement made in the *fardbeyan*. In addition to what was stated in the *fardbeyan*, she stated in her examination-in-chief that she informed the Mukhiya of the village first and, thereafter, came



to the place of occurrence. The police came and prepared the inquest report. Thereafter, the body of the victim was taken to the hospital for postmortem examination. She stated that when she asked Amarjeet about the victim, he said that Ram Lal Mahto had put dust in his eyes and assaulted him and took away the victim in his lap by uttering the word “*Is bachche se santosh karo*” (be content with this child). She identified her signature on the *fardbeyan*, which was marked as Exhibit-2. She identified the photograph of the victim. She also identified the appellant in the dock.

14. In cross-examination, she stated that her *sasural* is situated at a distance of one mile from her *maike*. She cannot explain the boundary of the place of occurrence. She admitted that she did not know the appellant Ram Lal Mahto from before. She further admitted that she had not seen the occurrence herself. She came to know about Ram Lal Mahto from her brother Amarjeet. She stated that the victim had four injury marks on her body. Out of which, two injuries were caused by knife. The injuries caused by knife were around her genitalia and the forehead. She stated that clothes of the victim were drenched with blood, which were burnt at the time of cremation of the body. She denied the defence suggestion that



she did not know Ram Lal Mahto from before and implicated him at the instance of her villagers.

15. **Amarjeet Kumar (P.W.4)** was examined before the Trial Court on 24.09.2018. On inquiry by the court, he could not disclose his age. However, he disclosed his name as well as the name of his father and the name of his village. In his testimony, he stated that the incident took place about two days ago. Immediately, thereafter, he said that the incident took place on 2nd without specifying the month and the year. He stated that at the time of the incident, when he was playing with the victim, Ram Lal Mahto came there and asked him to fasten the goat. When he started going together with the victim, Ram Lal Mahto stopped him and put dust in his eyes and pushed him down and took away the victim. Thereafter, he washed his face and returned back to home and narrated the entire incident to the informant. He identified the appellant in the dock. He stated that his statement was recorded by a Magistrate. He proved his signature on the statement made under Section 164 CrPC, which was marked as Exhibit-3.

16. In cross-examination, he stated that he cannot say how much time had elapsed since the incident took place. He admitted that he did not know Ram Lal from before. He further



admitted that it was the police who told him about the name of the accused whom he did not recognize from before. He also admitted that he had seen Ram Lal for the first time in the Court. He admitted that he stated before the court what was told to him by the police. He denied the defence suggestion that incident had not taken place in the manner narrated by him.

17. **Shrawan Kumar Mahto (P.W.1)**, who is brother of the informant stated in his testimony that at the time of the incident he was working in his field, which was situated in the northern direction from the Pand chock. He saw the appellant Ram Lal Mahto taking away the victim in his lap. After half an hour, when he returned back to his home, he came to know that Ram Lal Mahto had taken away his niece (the victim). Then, he informed Dalsingsarai police on telephone. Thereafter, the search for the victim started. The victim could not be located in the night. On next morning, at about 5:00 a.m., villagers started shouting that dead body of the victim was found in the field of Islal Mian. Thereafter, they rushed to the field of Islal Mian and saw the naked dead body of the victim lying in the field. One of her eyes was injured and her genitalia was having injury mark. The police came and prepared the inquest report over which he put his signature. He further stated that his statement was



recorded under Section 164 of the CrPC before the learned Magistrate upon which he put his signature, which was marked as Exhibit- 1. He identified the appellant in the dock.

18. In cross-examination, he admitted that he did not know the appellant Ram Lal Mahto from before. He stated that when police brought a photograph and said that it was of Ram Lal Mahto, he came to know about him. He further admitted that he does not know the boundary of the place of occurrence. He also admitted that no part of incident had taken place in his presence and he came to know about the incident in the morning from others.

19. **Nirmala Devi (P.W.3)**, the mother of the informant, stated in her testimony that on the date of occurrence, at about 6:00 p.m., she was at her home. The victim and Amarjeet were grazing goat at some nearby place. After sometime, when she came there, she saw that Ram Lal Mahto was having the victim in his lap and was taking her away. When she tried to stop him, he fled away. At about 6:30 p.m., she raised *hulla* that her grand-daughter had been kidnapped. Thereafter, the villagers and police kept on searching for the victim throughout the night. Next morning, around 5:00 a.m., she came to know that the dead body of the victim was lying in



front of Sibu Pokhar behind Karbala. She went there and saw the dead body of the victim; her thighs were having blood mark. It appeared that the injuries were caused by knife on her head. It also appeared that the victim was sexually assaulted and cotton was stuffed in her mouth. Thereafter, the police came, prepared the inquest report and took the body of the victim for postmortem examination. She stated that when she asked her son Amarjeet, he disclosed that Ram Lal Mahto had taken away the victim after putting dust in his eyes. She further stated that her statement was recorded under Section 164 of the CrPC wherein she had narrated the entire occurrence to the learned Magistrate. She identified the accused in the dock and stated that it was he, who had taken away her grand-daughter.

20. In cross-examination, she stated that the distance between her house and the house of the appellant Ram Lal Mahto was about one and a half to two kilometer. She admitted that she did not recognize Ram Lal Mahto from before and came to know about his name when the police told her about him. She admitted that she is not a witness to the incident of rape or killing of the victim. She denied the defence suggestion that she had not witnessed any part of the incident and implicated the appellant falsely due to dirty village politics.



21. **Ram Sudeen Rai (P.W.5)** stated in his testimony that on 02.06.2018 at 6:00 p.m., when he was keeping watch over his mango orchard, he saw the appellant Ram Lal Mahto taking away the victim in his lap. Next day, i.e., on 03.06.2018, he saw the dead body of the victim lying in the field of one Taiyab Mian. The victim was raped and her thighs and head were having blood marks. Her genitalia was swollen. He further stated that the police had come to the village on the date of occurrence itself in search of Ram Lal Mahto. He stated that the police searched for Ram Lal Mahto throughout the night but could not apprehend him. He identified his signature on the *fardbeyan* which was marked as Exhibit 2/1. He also identified the appellant in the dock.

22. In cross-examination, he stated that the house of Ram Lal Mahto was situated at a distance of one kilometer from his house. He had seen him taking away the victim and was not a witness to other parts of the occurrence. He reiterated that he had not seen the commission of rape himself but had seen taking away the victim by the appellant. He denied the defence suggestion that he has deposed falsely and had not seen Ram Lal taking away the victim.

23. **Dr. Jaikant Paswan (P.W.8)** stated in his



testimony that on 03.06.2018 he was posted as a Medical Officer in the Sadar Hospital, Samastipur. On that day, a Medical Board of Dr. S.K. Choudhary as its Chairman, Dr. Kanti Kumari, Dr. Nagmani Raj and he himself as its members was constituted to conduct autopsy on the body of the deceased. The Board conducted the autopsy and on the body of the deceased and made the following observations:

“External Examination

- (i) Bloody serum coming from mouth and nostrils.*
- (ii) Whole body soiled with dust.*
- (iii) Lacerated wound right eyebrow 1/2” x 1/3” x 1/4”.*
- (iv) Swelling forehead and frontal region of scalp 3” x 2”.*
- (v) Lacerated wound introitus of vagina – Left side 1/2” x 1/3” inches x muscle deep with dry blood clot with cedema of labia minora.*

Internal Examination

- (i) Subcutaneous hematoma frontal region of scalp. Frontal bone was fractured. Blood and blood clots in cranial cavity.*
- (ii) All viscera’s were pale.*
- (iii) Time elapsed since death was within 36 hours.*
- (iv) Death in our opinion was due to hemorrhage, brain injury and shock produced by abovementioned injury caused by impact of hard and blunt substances.*

Note- *(i) There is evidence of sexual assault.*

(ii) Vaginal swab examination shows no spermatozoa. Slide has been preserved for



exhibit.”

24. In cross-examination, he denied the defence suggestion that the postmortem report was not prepared in a scientific manner. He denied that the postmortem report was a table report and was defective one. He proved the postmortem report and his signature over it. He also identified the signatures of Dr. S.K. Choudhary, Dr. Kanti Kumari and Dr. Nagmani Raj over the postmortem report.

25. **Braj Kishore Singh (P.W.6)**, the first Investigating Officer of the case, stated in his testimony that on 03.06.2018, he was posted as a Sub Inspector of Police at Dalsingsarai Police Station. On that day, on the basis of the oral statement of the informant recorded by Koiliming, an Assistant Sub Inspector of Police, Dalsingsarai P.S. Case No.150 of 2018 was instituted by Naresh Paswan, the Inspector-cum-SHO of the police Station and the investigation of the case was handed over to him. He identified the signature of the Koiliming at the bottom of the *fardbeyan*. He also identified the signature of Naresh Paswan on the last page of the formal FIR. He stated that Koiliming had prepared the inquest report and put his signature over it. He stated that after the investigation of the case was handed over to him, he recorded the subsequent



statement of the informant and inspected the place of occurrence, recorded the statements of the witnesses namely, Amarjeet Kumar Rai, Ram Sudeen Rai, Shrawan Mahto and Nirmala Devi, sponsored Ram Sudeen Rai, Nirmala Devi, Shrawan Mahto and Amarjeet Kumar for recording their statements under Section 164 of the CrPC by a learned Magistrate, arrested the appellant Ram Lal Mahto, collected the postmortem report of the deceased and handed over investigation of the case to the SHO Naresh Paswan on 20.06.2018. He identified the appellant in the dock.

26. In cross-examination, he stated that the genital of the victim was found swollen and there was cut mark over her eyes. The left eye was also swollen. He admitted that blood-stained soil was not found at the place of occurrence. He did not take sample of blood from her body. He stated that he identified Ram Lal Mahto as he had arrested him on the basis of the statement of witnesses. He admitted that he did not hand over the investigation to Sunil Singh. He handed over the investigation to the SHO, Naresh Paswan on 20.06.2018. He denied the defence suggestion that the investigation conducted by him was defective and he had prepared a table report without investigating the case.



27. **Sunil Kumar (P.W.7)** is the second Investigating Officer of the case. He stated that he took over the investigation of the case on 01.07.2018. By that time, major part of the investigation was carried out. He received the supervision report of the Sub Divisional Police Officer and in compliance with the same, obtained the vaginal swab slide of the victim from the Sadar Hospital, Samastipur and sent the same to the Forensic Science Laboratory, Muzaffarpur. He submitted charge-sheet before the Court vide Charge-sheet No.157 of 2018 on 25.07.2018.

28. In cross-examination, he admitted that he did not record statement of any witness. He further admitted that he did not inspect the place of occurrence. He also admitted that he just copied the supervision note of the Supervising Officer in the case diary.

29. After the closure of the prosecution evidence, the Trial Court examined the appellant under Section 313 of the CrPC in which he pleaded his innocence. He stated that he does not reside at village-Pand. He used to reside at the house of his maternal grand-mother and only due to land dispute he has been implicated falsely in the case.

30. After examination of the appellant under Section



313 of the CrPC, the defence examined five witnesses in order to prove the innocence of the appellant. They are Ganga Prasad Mahto (D.W.1), Jageshwar Das (D.W.2), Ram Dayal Giri (D.W.3), Bindeshwari Mahto (D.W.4) and Ram Bharos Mahto (D.W.5).

31. **Ganga Prasad Mahto (D.W.1)** stated in his deposition that Ram Lal Mahto used to reside at his *nanihal* situated at village-Malpur after his mother died when he was three years old. The villagers of his parental village used to threaten him to kill. They had taken possession of his land. It was because of their fear, Ram Lal Mahto used to reside at his *nanihal*. He further stated that Ram Lal Mahto bears a good moral character and there is no complaint against him in the society. He stated that he came to know that his co-villagers got him implicated in a false case in order to grab his land.

32. In cross-examination, he admitted that he was not acquainted with the deceased. He also admitted that he came to depose before the Court at the instance of the maternal grandfather of the appellant. He denied the defence suggestion that he had deposed falsely with an intention to save the appellant from punishment.

33. **Jageshwar Das (D.W.2)** stated in his testimony



that the appellant had been falsely implicated in the case. His paternal village was Pand whereas he was residing at his *nanihal* and used to come Pand occasionally, as his *patidars* used to threaten him in order to grab his share in the ancestral property. He stated that the conduct of the appellant was good. In cross-examination, he admitted that the appellant is his nephew. He further admitted that he had come to depose before the Court at the instance of the father of the appellant. He also admitted that he did not know anything about the instant case.

34. **Ram Dayal Giri (D.W.3)** stated in his testimony that the house of the appellant Ram Lal Mahto is at a distance of 200 yards from his house. He used to reside in his *nanihal* and used to come to his parental village occasionally. He was having land dispute with his *patidars* in parental village. They wanted to grab his share in the ancestral property. In cross-examination, he also admitted that he had come to the Court at the instance of the father of the appellant.

35. **Bindeshwari Mahto (D.W.4)** is the maternal grandfather of the appellant. He stated in his testimony that the appellant was residing with him at his *nanihal*. He occasionally used to visit his parental village-Pand. His other co-parceners used to threaten and assault him in order to grab his share in



ancestral property. He stated that an account was also opened in the name of appellant in the post office at Malpur in the *nanihal*. He proved the certificate issued by the postmaster, which was marked as Exhibit A. In cross-examination, he stated that the appellant has not filed any case before any forum regarding the land dispute.

36. **Ram Bharos Mahto (D.W.5)** is the father of the appellant. He stated in his testimony that the appellant used to reside in his *nanihal*. He came to his parental village occasionally as his *patidars* used to assault him with an intention to grab his share in ancestral property. In cross-examination, he stated that at the time of the murder of the victim, he was not present in his village. He admitted that he had not filed any title suit or partition suit against anyone regarding the land dispute.

37. Mr. Subodh Prasad, learned counsel appearing for the appellant submitted that the Trial Court did not appreciate the evidence in correct perspective. He contended that the witnesses examined on behalf of the prosecution during trial are not reliable. Their testimonies are full of inconsistencies. They are not eye witnesses to the occurrence. They have stated that they came to know the name of the appellant from the police.



They did not know the appellant before incident took place. They got to know about the appellant from the Investigating Officer. He further contended that the Trial Court failed to appreciate that the witnesses examined on behalf of the defence are consistent on the point that the appellant was not present in his village at the time of occurrence. He was residing at his *nanihal*. He contended that the Trial Court failed to appreciate that there was a strong motive for false implication of the appellant in the present case as his *patidars* wanted to grab his share in the ancestral property. He contended that the prosecution case is based on circumstantial evidence but the chain of circumstance is not complete.

38. Mr. Kumar Kaushik, learned *amicus curiae*, in Death Reference No.1 of 2021 submitted that from the testimonies of P.Ws. 1, 2 and 5, it would be evident that the police had been informed about the incident on 02.06.2018 in the night. The police came to the village-Pand where the incident had taken place in the night of 02.06.2018 and made a search for the victim and the accused. However, no FIR was registered on 02.06.2018. The FIR was belatedly registered on 03.06.2018 at 9:00 a.m. and the same was transmitted to the court on 04.06.2018. He submitted that the inordinate delay in



institution of the FIR in spite of having adequate information about a cognizable offence to the police creates a reasonable doubt about the bona fide of the contents of the FIR. He further contended that the delay in sending the FIR to the Magistrate forthwith under Section 157 of the CrPC renders the FIR doubtful. He urged that a perusal of the postmortem report would suggest that the body of the deceased was received at the Sadar Hospital, Samastipur on 03.06.2018 at 11:05 a.m. and the postmortem examination on the body of the deceased commenced at 11:15 a.m. on 03.06.2018, whereas the FIR was registered at 9:00 a.m. on 03.06.2018, but the P.S. Case number is not mentioned in the postmortem report. The postmortem report would reveal that it was Lutan Paswan, a Chowkidar, who had accompanied the corpse and identified the deceased. He contended that non-mentioning of the FIR number in the postmortem report goes to suggest that the FIR is ante-dated and ante-timed. He further contended that non-examination of the Chowkidar Lutan Paswan has prejudiced the case of the defence.

39. Advancing his argument, Mr. Kaushik, learned *amicus curiae*, submitted that when the time and date of the registration of the FIR are doubtful, the failure to exhibit the



inquest report and the failure to examine the ASI Koiliming, who recorded the *fardbeyan*, is fatal to the case of the prosecution. He further contended that the information received by the police on the basis of which, the search was carried out in the night of 02.06.2018 has been suppressed. The withholdment of the initial information given to the police regarding the incident makes the FIR a suspicious document. He contended that the evidence on record would suggest that the appellant was not known to the witnesses before the occurrence. Though, he was arrested within few days of the institution of the FIR, he was not put on test identification parade. His identification for the first time in the court, under such circumstance, is valueless. Lastly, he contended that the oral evidence of P.W.4, a child witness, is not reliable. He was not even able to understand and tell his age when the court enquired from him about his age. No *voir dire* test was conducted by the Trial Court before recording his evidence.

40. On the other hand, Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State submitted that in the present case, the Trial Court has appreciated the evidence properly and has come to a right conclusion. The evidence led on behalf of the prosecution is consistent. All the prosecution



witnesses have stated that the appellant was seen taking away the victim. When the victim went missing, the villagers as well as the police searched for the victim and the accused, but neither of them could be found. On the next morning, the dead body of the victim was found. She contended that the witnesses have categorically stated that the victim had sustained injuries not only on her genital but also on other parts of her body.

41. Ms. Verma, learned Additional Public Prosecutor for the State further contended that P.W.4 is the most reliable witness in the case. Though, a child, he was a competent witness. He is consistent in his version that it was the appellant, who took away the victim after putting dust in his eyes. Immediately, thereafter, in the next morning, the body of the victim was found. The medical report also corroborates the prosecution case that the victim was raped and killed. As per the postmortem report and examination-in-chief of P.W.8, lacerated wound on right eyebrow and introitus of vagina as well as swelling on her forehead and frontal region of scalp was also found. P.W.8 categorically stated that the evidence of sexual assault was noticed. She argued that though there is no eye witness to the incident of rape and murder, the circumstances enumerated by the witnesses would clearly show



that it was the appellant who had raped the victim and brutally killed her.

42. We have heard learned counsel for the parties and carefully perused the record.

43. From the evidence on record, it can safely be said that the prosecution has been able to prove that the victim, a minor, was sexually assaulted and was killed. Her death was a homicidal one.

44. Now, the question that falls for our consideration is whether the prosecution has been able to prove the case against the appellant beyond reasonable doubt that it was he, who had raped and killed the minor victim.

45. In the case at hand, there is no eye-witness to the killing of the deceased or the sexual assault made upon her.

46. The incident can be split in two parts. The first part is taking the minor girl to an isolated place and the second part of raping and killing her.

47. So far as the first part is concerned, during trial, though Shrawan Kumar Mahto (P.W.1), Sangita Kumari (P.W.2), Nirmala Devi (P.W.3), Amarjeet Kumar (P.W.4) and Ram Sudeen Rai (P.W.5) claim themselves to be eye witness. They have stated in their examination-in-chief that they saw the



appellant taking away the victim but when I closely look at their cross-examination, it would be apparent that they are not consistent. Shrawan Kumar Mahto (P.W.1) stated in para 7 of his cross-examination that he did not know Ram Lal Mahto from before. He stated that he came to know about him only after the police showed him his photograph. Similarly, Sangeeta Kumari (P.W.2) admitted in paragraph-14 of her cross-examination that she did not know Ram Lal Mahto from before. She came to know about him from her brother Amarjeet. On the contrary, Amarjeet Kumar (P.W.4), admitted in para-7 of his cross-examination that he saw Ram Lal Mahto for the first time in the court. He said that he did not know Ram Lal Mahto from before. He admitted that he was tutored by the police and he narrated before the court what was told to him by the police.

48. Thus, if P.W.4 was not knowing the appellant from before and saw him for the first time in the dock while adducing evidence, there was no occasion for him to have divulged the identity of the appellant to P.W.2 Sangeeta Devi.

49. Likewise, Nirmala Devi (P.W. 3), admitted in para 9 of her cross-examination that she did not identify Ram Lal Mahto from before. She came to know his name after the incident when the police told her about him.



50. Thus, from the evidence tendered by P.W.1 and P.W.3, it would be evident that they did not know the appellant from before the incident. They did not identify him even at the time of occurrence and their source of knowledge about the involvement of the appellant in the present case was police.

51. However, from the evidence tendered by Braj Kishore Singh (P.W.6), the 1st Investigating Officer, it would be evident that he had arrested the appellant on the basis of statement of witnesses. He himself did not know him from before.

52. Thus, if the Investigating Officer was not knowing Ram Lal Mahto from before, it cannot be believed that he could have told his name to P.W.3 Nirmala Devi, who was not acquainted with him in any manner. The evidence of P.Ws.1, 2, 3 and 4 does not inspire any confidence. Their evidence does not lead to any singular conclusion.

53. Moreover, P.W.4 was a child witness. At the time of recording his evidence, extreme care was required to be taken by the Trial Court for the purpose of determining his understanding as well as for ensuring that he is stress-free and relaxed. On questioning, he could not disclose his age. The Trial Court took his evidence without certifying whether or not



he was a competent witness.

54. As recorded, hereinabove, the witnesses examined on behalf of the prosecution do not seem to be reliable. They were not recognizing the appellant from before the incident. Under such circumstance, it was incumbent upon the Investigating Officer to have put the appellant on Test Identification Parade for his identification by the witnesses. It is an admitted position that the appellant was not put on Test Identification Parade and was identified by the witnesses for the first time in the dock. Such identification is a weak type of evidence.

55. So far as the second part of the incident is concerned, when I look at the testimony of the witnesses, I find that Shrawan Kumar Mahto (P.W.1), the maternal uncle of the victim stated in para-1 of his deposition that he informed the police at Dalsinghsarai Police Station on phone within half an hour after the victim went missing and, thereafter, the search for the victim started. Similarly, Sangeeta Kumari (P.W.2) stated in para-1 of her deposition that she along with others went to the police station in the night of 02.06.2018 whereafter the police came and started searching for the victim. Similarly, Ram Sudeen Rai (P.W.5) has also stated in his testimony in para 4



that the police came in the night of 02.06.2018 and started searching for the appellant Ram Lal Mahto.

56. Thus, if the testimonies of P.Ws. 1, 2 and 5 are to be believed, a definite information about the kidnapping of the victim by the appellant Ram Lal Mahto was given to the police on 02.06.2018 in the night pursuant to which the police arrived at the village-Pand where the incident had taken place and started searching for the victim and the accused. Under such circumstance, the FIR ought to have been registered on 02.06.2018 in the night itself, but in the instant case the FIR was registered on 03.06.2018 at 9:00 a.m.

57. There is no duration of time, which is fixed for giving information of a crime to the police. However, if there is an unexplained delay in lodging the FIR, it gives rise to suspicion which puts the court on guard. In case, the police fail to institute FIR deliberately on receipt of information of a cognizable offence and the FIR is instituted after a considerable lapse of time, the investigation becomes suspect.

58. In *State of Andhra Pradesh vs. Punati Ramulu and Ors.* reported in *1994 Supp (1) SCC 590*, the Supreme Court observed: “that investigating officer has deliberately failed to record the FIR on receipt of information of a



cognizable offence of the nature, as in this case, and had prepared the FIR after reaching the spot after due deliberations, consultations and discussions, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would be stopped to fabricate evidence and create false clues”.

59. In ***Mukesh and Ors. vs. NCT of Delhi and Ors.*** reported in ***(2017) 6 SCC 1***, the Supreme Court observed:

“Delay in setting the law into motion by lodging of complaint in court or FIR at police station is normally viewed by courts with suspicion because there is possibility of concoction of evidence against an accused. Therefore, it becomes necessary for the prosecution to satisfactorily explain the delay. Whether the delay is so long as to throw a cloud of suspicion on the case of the prosecution would depend upon a variety of factors. Even a long delay can be condoned if the informant has no motive for implicating the accused.”

60. In ***Ram Jag and Ors. vs. State of U.P.*** reported in ***(1974) 4 SCC 201***, the Supreme Court observed: *“that whether the delay is so long as to throw a cloud of suspicion on the receipts of the prosecution must depend upon a variety of factors which would vary from case to case. Even a long delay*



can be condoned if the witnesses have no motive for implicating the accused and/or when the plausible explanation is offered for the same. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness or authenticity of the version of the prosecution”.

61. It is reiterated that in the instant case the victim went missing at 6:00 p.m. on 02.06.2018. The evidence would suggest that P.W.1 informed the police about the incident within half an hour on phone and P.W.2 went to Dalsinghsarai police station and informed the police about the incident in the night on 02.06.2018. The evidence would further suggest that on receipt of the information about a cognizable case, the police did arrive at the place of occurrence and searched for the victim as well as the accused in the night on 02.06.2018, but there is no explanation as to why the FIR was not registered on 02.06.2018 and the same was instituted at 9:00 a.m. on 03.06.2018.

62. Thus, it would be evident that the SHO has deliberately failed to institute the FIR on receipt of an information about a cognizable offence of serious nature and the investigation commenced even without registration of the case. The Investigating Officer failed to register FIR even after



reaching the spot and commencement of investigation in the night on 02.06.2018. The institution of FIR on the next day at 9:00 a.m. gives an impression that the same was instituted after due deliberations, consultations and discussions. Under such circumstance, the conclusion becomes inescapable that the investigation was tainted and it would be highly unsafe to rely on such tainted investigation.

63. I find force in the submission of Mr. Kaushik, learned *amicus curiae* that when the body of the deceased was received at the Sadar Hospital, Samastipur at 11:05 a.m. on 03.06.2018 and the FIR was registered at 9:00 a.m. on 03.03.2018, the non-mentioning of police case number in the postmortem report prepared by the doctor gives rise to a suspicion that the FIR is ante-dated and ante-timed.

64. From a perusal of the postmortem report, it would be evident that the Chowkidar Lutan Paswan had accompanied the corpse and identified the deceased before the doctor. The said chowkidar has not been cited as a witness in the charge-sheet. He was not examined during trial. The ASI of Police Koiliming, who recorded the *fardbeyan* and prepared the inquest report and the SHO, Naresh Paswan, who instituted the FIR and handed over the investigation of the case to the two



Investigating Officers have also not been examined during trial. The information received by the police on the basis of which search was carried out in the night on 02.06.2018 has also been suppressed. The non-examination of the aforesaid important witnesses and the suppression of the initial information given to the police on the basis of which the police came to the village where the incident had taken place have certainly prejudiced the case of the defence as the defence has been deprived of the opportunity to test the correctness of the prosecution case.

65. Since I have doubted the evidence of witnesses examined on behalf of the prosecution, the last seen theory propounded by the prosecution as against the appellant collapses.

66. Moreover, the pre-requisites for conviction based on circumstantial evidence crystalized in cases of *Sharad Bridhichand Sharda vs. State of Maharashtra* reported in (1984) 4 SCC 116; *Shivaji Sahebrao Bobade & Anr. vs. State of Maharashtra* reported in (1973) 2 SCC 793; *Padala Veera Reddy vs. State of Andhra Pradesh and Ors.* reported in 1989 Supp (2) SCC 706; and *Bhagat Ram vs. State of Punjab* reported in AIR 1954 SC 621 by the Supreme Court are not established.



67. Hence, on consideration of the entire evidence, I find that the prosecution has miserably failed to prove its case beyond reasonable doubt against the appellant.

68. There is no doubt in my mind that the offence committed in the instant case was gruesome and revolts the conscience but that alone could not have been a ground to convict the appellant in absence of legal evidence against him.

69. Accordingly, the impugned judgment of conviction dated 16.12.2020 and the consequent order of sentence dated 19.12.2020 passed by the learned Additional Sessions Judge-6th-cum-Special Judge, POCSO Act, Samastipur in Tr. No.154 of 2020, R.G. No.535 of 2018 are, accordingly, set aside.

70. The appeal is allowed.

71. The appellant, namely, Ram Lal Mahto is acquitted of the charges levelled against him. He shall be released from the jail forthwith unless required in any other case.

72. Since I have allowed the appeal and set aside the impugned judgment of conviction and the consequent order of sentence passed by the Trial Court, the reference made by the Trial Court for confirmation of death sentence vide Death Reference No.1 of 2021 is, hereby, rejected.

73. Before parting with the Death Reference and the



appeal, I record my appreciation for the able assistance rendered by Mr. Kumar Kaushik, learned *amicus curiae*.

74. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs.7,500/- (Rupees Seven Thousand Five Hundred) to Mr. Kumar Kaushik, learned *amicus curiae* in Death Reference No.1 of 2021 as consolidated fee for the services rendered by him.

(Ashwani Kumar Singh, J.)

I agree
Arvind Srivastava, J.

(Arvind Srivastava, J.)

sanjeet/-

AFR/NAFR	NAFR
CAV DATE	21.12.2021
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