

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.205 of 1996

1. Shatrughan Ram @ Shatrughan Kahar, son of Krishna Ram
2. Bachchu Ram @ Bachchu Kahar, son of Baso Ram
Both residents of village Chakjalal, P.S.- Bhadaur in the district of Patna.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mrs. Anukriti Jaipuriyar (Amicus Curiae)
For the Respondent/s : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH

SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 26-08-2022

The present criminal appeal has been preferred against the judgment of conviction dated 25.03.1996 and order of sentence dated 27.03.1996 passed by Additional Sessions Judge-I, Barh in Sessions Trial No. 377 of 1993 arising out of Bhadaur P.S. Case No. 3/1993, whereby and whereunder the present appellants, namely, Shatrughan Ram @ Shatrughan Kahar and Bachchu Ram @ Bachchu Kahar have been convicted under Sections 302, 324, 452, 376, 366/34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life under Section 302 of Indian Penal Code, rigorous imprisonment for 7 years under Section 366 of Indian Penal Code, rigorous imprisonment for 10 years under Section 376 of Indian Penal Code,



rigorous imprisonment for 3 years under Section 452 of Indian Penal Code and rigorous imprisonment for 2 years under section 324 of the Indian Penal Code and sentences to be served by the appellants have been directed to run concurrently.

2. By order dated 29.11.2021, passed by Co-ordinate Bench of this Court, Mrs. Anukriti Jaipuriyar was appointed as Amicus Curiae to assist the Court on behalf of present appellants as none had appeared on behalf of appellants on that date.

3. The prosecution case, in brief as stated in the *fardbeyan* of informant, is that she had come to her maternal home two and half months prior to the happening of the incident and there she was residing with her old disabled mother who was a beggar and used to earn her livelihood by begging. The informant further stated that on 18.1.1993 at 10 p.m., she was sleeping with her mother in the house when the two accused persons namely Bachchu Kahar (appellant No.2) and Shatrughan Kahar (appellant No.1) entered into the house armed with *fasuli*. The appellants thereafter caught her and wanted to take her outside the house, on which, she and her mother raised alarm after which the accused persons assaulted her mother with *fasuli* due to which she fell down and thereafter the accused persons also gave a blow of *fasuli* on her as a result of which she sustained injury on both the thumb, on her hand, on her leg and on her head. The informant further narrated in her *fardbeyan* that the accused persons threatened her and asked her to maintain silence and thereafter both the accused



persons dragged her out of the house and took her in *dalan* of Shatrughan Kahar (appellant No.1) near the bank of river Ganga. On the said *dalan*, the accused persons laid her down on a cot and put cloth on her mouth and committed rape on her one after another. After commission of rape, the accused persons took her near the bank of river and released her with threatening that if she will tell the incident to any person, they will commit her murder. Thereafter she came to her house and found her mother dead and narrated about the incident to the wife of Naresh. On the following morning, many people came to her house.

4. On 19.1.1993, at 10.15 a.m., the Officer-in-charge, on being informed by Chowkidar about the commission of the offence of murder, proceeded to the place of occurrence and recorded the *fardbeyan* of the informant at 12.30 noon. The case was registered and investigation was taken up by the police. After completion of investigation, the police submitted charge-sheet against the accused persons under Sections 302, 324, 452, 376, 366/ 34 of the Indian Penal Code. The cognizance of the offence was taken by the learned Jurisdictional Magistrate and thereafter the case was committed to the Court of Sessions. Charges under the aforesaid sections were framed against the accused persons namely Shatrughan Ram @ Shatrughan Kahar and Bachchu Ram @ Bachchu Kahar (the present appellants of the case). The appellants pleaded not guilty and claimed to be tried.



5. During the trial, the prosecution examined altogether eight witnesses, namely, Victim, P.W.-1 (the informant of the present case), Sushila Devi P.W.-2 (wife of Naresh Kumar), Sonwa Devi P.W.-3 (wife of Janeshwar Rabidas), Mahendra Paswan P.W.-4, Dr. Ms. Doli Ranidhar P.W.-5 (the doctor who examined the victim), Dr. Ramesh Kumar P.W.-6 (who conducted the post mortem of deceased Jamintri Devi), Nandey Paswan P.W.-7 and Sub-Inspector Dudheshwar Nath Pandey P.W.-8 (the Investigating Officer of the case). Further P.W.-2 has been declared hostile by the prosecution and P.W.-3 Sonwa Devi has been tendered for cross-examination by the prosecution. The prosecution has brought on record twelve exhibits in support of its case namely: Ext.-1 signature on inquest report, Ext. -2 signature on seizure list, Ext.-3 injury report, Ext. 4 post mortem report, Exts.-5, 5A and 5B signature on the injury report, Ext. 6 signature on seizure list and blood stained clothes of victim, Ext.-7 inquest report of the dead body, Ext.-8 fardbeyan, Ext. 9 formal F.I.R., Ext.10 seizure list consisting of bloodstained *saya* and *sari* of the victim, Ext. 11 requisition sent for chemical examination of vaginal swab on bloodstained cloth and Ext.-12 kaman issued by the I.O. Thereafter, the statements of the appellants were recorded under section 313 of the Cr.P.C and after conclusion of the trial, the learned trial court convicted the appellants.

6. Learned Amicus Curiae, appointed on behalf of appellants submitted that the judgment of conviction suffers from several infirmities and, therefore, cannot be sustained in the eyes of law. There



are several lacunae in the case of prosecution which has been overlooked by the Trial Court by holding the appellants guilty. Further, the case was initiated on the basis of the information given by Chaukidar to the Officer-in-Charge of Police Station on 19/01/1993 at 10.15 A.M. On this information, the Officer-in-charge made the S.D. Entry No. 257 on 19-1-1993 but the said Chowkidar has not been examined by the Prosecution. Further, the learned Amicus Curiae submits that the earliest version S.D. Entry No. 253 dated 19-1-1993 of Bahadur Police Station has not been brought on record by the prosecution, which is fatal to the case of prosecution. It is submitted by the learned counsel that the medical evidence is in contradiction with the ocular evidence as the deposition of P.W.5, who prepared the injury report, states that injuries found on the body of victim, from Injury Nos. 1 to 5, are superficial in nature. Further, the deposition of P.W.6, who performed the post-mortem examination, has stated that cause of death was due to strangulation in addition to the shock and haemorrhage caused by the injuries found on the dead body. Thus, the learned Trial Court has failed to appreciate the evidence on record and the prosecution has failed to prove its case beyond the pale of reasonable doubt. Therefore, the learned counsel submits that the judgment of conviction and order of sentence is liable to be set aside.

7. Learned A.P.P. for the State has submitted that the judgment of conviction and order of sentence under challenge requires no interference as the prosecution has been able to prove its case



beyond all reasonable doubts. From the evidence, which has been adduced by the prosecution, the guilt of the appellants is satisfactorily proved and there is no infirmity in the judgment of conviction and order of sentence rendered by the Trial Court.

8. After hearing the arguments advanced by both sides and perusing the materials available on record, following issues arise for consideration in this appeal:-

(i) Whether the prosecution, taking aid of the evidence produced and submitted before the Court, has been able to prove the manner of occurrence beyond reasonable doubt?

(ii) Whether the prosecution, by adducing evidence before the Court, has been able to establish and prove the place of occurrence beyond reasonable doubt?

(iii) Whether the ocular evidence used in the commission of offence is corroborated by the medical evidence brought on record on behalf of the prosecution?

(iv) Whether the Court, at the stage of recording the statement under Section 313 of Cr.P.C., has put the entire material which has come against the appellants in course of trial?



9. Now adverting to the first issue, P.W.-1 the informant and victim of this case has fully supported her *fardbeyan* during trial and stated in her examination-in-chief that on the night of occurrence while she was sleeping along with her mother in the house, whose door was closed, the accused persons entered into the house and she identified them in light of *deepak*. The accused persons were armed with *fasuli* and thereafter they caught hold of her and wanted to took her out of the house in consequence to which she and her mother (the deceased) raised an alarm due to which they gave blow of *fasuli* to her mother and thereafter after her mother fell down. The accused persons also gave a blow of *fasuli* on her person due to which, she sustained injuries on her thumb, forehead and leg. The accused persons dragged her out from her house and took her to the *dalan* of Shatrughan Kahan situated near the bank of river, where she was subjected to rape for a continuous period of 2-3 hours, by both the appellants one after another as a result of which she has sustained injuries on her thigh. She further explained the injury sustained by her due to commission of rape in her cross-examination, done on behalf of Bachchu Kahar, that, the accused persons one after another continuously subjected her to rape due to which she felt immense pain on her private part. In respect to the injury sustained by her due to *fasuli*, the same finds corroboration through the injury report (Ext.3) adduced by the prosecution which mentions the injuries on the person of the victim as :-

- (i) sharp cut wound 1" x 1/4" x 1/4" in the middle of the forehead.



- (ii) sharp cut wound 1" x 1/4" x 1/4" on the middle of the lateral side of the right thumb.
- (iii) sharp cut wound 1" x 1/4" x 1/4" on the back of the right elbow.
- (iv) sharp cut wound 1" x 1/2" x 1/2" on the back of the right elbow.
- (v) sharp cut wound 1" x 1/s" x 1/4" on the right foot between 4th and the 5th toe.

The injury report is further supported by the deposition of P.W.-5, the doctor who had examined the victim. In respect to the commission of rape on her person, the deposition of P.W.-1 with respect to the injury sustained by her finds sufficient corroboration through the injury report, in which the injury is mentioned as "thigh-linear bruise 6 in numbers on medical aspects of left thigh of varying sizes between 1" x 1/6" x skin deep". The above mentioned injuries, found in injury report and corroborated by the deposition of P.W.5, are sufficient to prove the fact that the victim was subjected to the offence of rape. In respect to the commission of the offence of murder by the blow of *fasuli*, the deposition of P.W.1 before the Court finds sufficient corroboration with the post mortem-report and the deposition of P.W.6, the doctor who conducted the post mortem examination of the deceased, wherein he observed the following:-

- (i) both eyes closed.
- (ii) sharp Cut on right elbow ventral aspect 4"x 5" bone deep.
- (iii) sharp Cut 3" x 4"X bone deep. On left elbow ventral aspects.
- (iv) sharp Cut Wound 1" x 1" x 1/8 on left cheek.



In the opinion of doctor, death is due to shock and hemorrhage due to the above mentioned injuries. We pause here to mention that so far the another part of doctor's opinion as deposed before the Trial Court is concerned, which states that death is caused due to strangulation of neck. We are of the opinion that the latter part of doctor's deposition in regard to his opinion is not reliable for the reason that there has been no mention of any external injury, either in the post-mortem report or in his deposition to suggest strangulation on the neck of the deceased. Further, in paragraph No. 7 of the said deposition the doctor has categorically stated that he did not found any external injury on the neck of the deceased. Furthermore, it is neither the case of prosecution that the death of the deceased is caused by the strangulation of neck. Hence, in view of the aforementioned reasons, the medical opinion of the doctor to latter part of the conclusion, in respect to the death caused by strangulation, is not trustworthy and cannot be relied upon. Also, the identification of accused persons by P.W.1, in light of *deepak*, constitutes the source of identification whose veracity cannot be doubted and the defence has not adduced any evidence to disbelieve the same. Therefore, in appreciation of the evidence mentioned above, this Court has come to the conclusion that the prosecution has been able to prove the manner of offence, both of rape of the informant and murder of deceased, beyond all shadow of reasonable doubt.

10. Now adverting to the second issue, from the perusal of the evidence, it appears that there are two places of occurrence. The first



place is where the offence of murder has been committed and the second place is where the victim was subjected to the offence of rape. The Investigating Officer(P.W.8) in his deposition in paragraph No. 3 stated that in the house of the informant, he found the dead body of the deceased lying and found her cloth soaked with blood and he also found large quantity of blood in the room, near the floor of the house and over the walls of the room. Further, in regard to the second place of occurrence, the Investigating Officer in paragraph No. 9 of his deposition stated that the second place of occurrence is located at 50-60 square yard feet where there is *dalan* of the appellant Shatrughan Kahar. The place of occurrence as mentioned by the informant in her deposition finds sufficient corroboration in the deposition of Investigating Officer and, therefore, the prosecution has been able to prove the place of occurrence beyond reasonable doubt.

11. Now, coming to the third issue, as far as the injuries sustained by the deceased and victim is concerned, the post-mortem report, the injury report and the deposition of doctors (P.W.5 and P.W.6), is stated to have been caused in case of the deceased, by sharp cutting weapon and in case of the injured victim, the presence of sharp cut wound has been found. The same has been corroborated through the deposition of P.W.1 wherein she has stated that the accused gave a *fasuli* blow to the deceased and to the victim while raising an alarm, as a result of which the mother of the victim fell down and the victim sustained injuries. Thus, the medical evidence and the ocular evidence



sufficiently corroborate each other. The injuries sustained by the deceased as well as by the informant/victim are caused by sharp-cutting weapon, which is *fasuli*, as it is alleged by the prosecution.

12. In order to deal with the fourth issue as formulated above, from the perusal of the statement of the appellants recorded under Sec 313 of Cr.P.C, it appears that suggestion was made to the appellants regarding the offences for which the appellants have been charged. The Court below has put all the incriminating material which have come during the trial against the appellants. From perusal of record, it appears that the examination of the accused under Section 313 Cr.P.C is a very detailed one including place of occurrence, manner of occurrence and time of occurrence of the commission of offence of murder and rape, for which the present appellants have been charged and convicted. Therefore, the learned Trial court has discharged its duty properly and has left no stone unturned in examining the appellants and the appellants have been given a fair opportunity to defend their case.

13. On the basis of the findings arrived at on the issues formulated above, we are of the considered opinion that the conviction of the appellants is sustainable as there is conclusive evidence to prove the guilt of the appellants. The prosecution has proved its case beyond all reasonable doubts.

14. Therefore, the present appeal stands dismissed and the judgment of conviction dated 25.03.1996 and order of sentence dated 27.03.1996 passed by Additional Sessions Judge-I, Barh in Sessions



Trial No. 377 of 1993 arising out of Bhadaur P.S. Case No. 3/1993 assailed in this appeal are upheld. Since the appellants are on bail, their bail bonds are hereby cancelled and they are directed to be taken into custody forthwith, to serve the remaining part of their sentence.

15. We cannot part away with this appeal, without recording our appreciation towards Mrs. Anukriti Jaipuriyar, learned Advocate appointed as Amicus Curiae, at the cost of State to represent the appellants, who has rendered her able assistance to this Court in this appeal. Therefore, we direct the Patna High Court Legal Services Committee to pay a sum of Rs. 5,000/- to Mrs. Anukriti Jaipuriyar, learned Advocate, appointed as Amicus Curiae by a Co-ordinate Bench of this Court by order dated 29.11.2021.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Pankaj/-

AFR/NAFR	NAFR
CAV DATE	
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