

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.443 of 2020

Arising Out of PS. Case No.-3 Year-2019 Thana- MAINATAND District- West Champaran

Bullet Sah Son of Shesh Sah @ Sheshnath Sah Resident of Village-
Ramnagari, Police Station- Mainatand, District- West Champaran.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Sachida Nand Rai, APP

For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 19-12-2022

This appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (Cr.P.C. for brevity) assailing the judgment of conviction dated 06.02.2020 and order of sentence dated 24.02.2020 passed by the learned 1st Additional District & Sessions Judge-cum-Special Judge (SC/ST/POCSO), Bettiah, District-West Champaran in Mainatand Police Station Case No. 03 of 2019, C.I.S. No. 02 of 2019, whereby the appellant has been convicted and sentenced as under:

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
302 of the Indian Penal Code	For life	50,000/-	Five years imprisonment
376D of the Indian Penal Code	20 years	50,000/-	Four years imprisonment



6 of the Protection of Children from Sexual Offences Act	For life	50,000/-	Five years imprisonment
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2. The victim's name has been concealed in the present judgment and is being referred to 'the victim'.

3. We have heard Mr. Bashishta Narayan Mishra, learned counsel with Mr. Brij Kishor Mishra, learned counsel for the appellant and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State.

4. In the background of the submissions advanced on behalf of the parties and the nature of the evidence adduced at the trial, it is considered apt to notice, at the outset, the contents of the First Information Report (F.I.R. for brevity) in detail.

5. The father of the victim (PW-5) is the informant. His written statement addressed to the Station House Officer of Mainatand police station in the district of West Champaran is the basis for registration of the F.I.R. i.e. Mainatand P.S. Case No. 03 of 2019. The prosecution's case, as unfolded by the informant in his written report dated 02.01.2019, is that his daughter (the victim) aged nearly 12 years after having cooked meal on 01.01.2019 at 08:00 pm had gone outside the house, to ease herself. In the meanwhile, the informant's brother, Anirudh Sah (PW-2) came and informed that two persons were seen



fleeing away after having seen him (PW-ii) towards the eastern side of the outskirts of the village, one of whom could be identified by him as Munna Ansari, a co-convict. He could not identify the other person. After having heard this, the informant (PW-5) inquired from his wife (PW-1) as to whether the victim had returned or not to which PW-1 told PW-5 that she had not returned so far. Thereafter, all the family members of the informant started searching for the victim and went towards eastern outskirts of the village. Finally, they found the naked dead body of the deceased lying on a heap of husk belonging to one Ramchandra Patel (not examined). They inferred on seeing nude dead body of the victim that she had been ravished and killed. Immediately thereafter, an information was given to the police, whereafter the SHO came and went to the place where the dead body was lying. Apparently, this appellant was not named in the F.I.R.. The appellant is indisputably is a nephew of the informant and his brother Anirudh Sah (PW-2).

6. It further transpires from the records that co-convict Munna Ansari was arrested on 02.01.2019 itself. He is said to have confessed his guilt in his statement made under Section 161 of the Code of Criminal Procedure (Cr.P.C. for brevity) before the police. In his confessional statement made before the



police, he also disclosed participation of the present appellant in commission of the offence. During the course of investigation, inner garment of the deceased and an inner lower body warmer of the said Munna Ansari was seized and sent for forensic examination to the Forensic Science Laboratory. A postmortem examination of the dead body of the deceased was conducted. The postmortem report suggested incident of sexual assault on the victim before she died of Asphyxia, as a result of throttling. The result of the Forensic Science Laboratory reads as under:-

“DESCRIPTION OF ARTICLES CONTAINED IN PARCELS

1. The old dirty blue kachhiya marked 'A' bore reddish brown stains at places. It also bore greyish white stains which were stiff to feel and which produced characteristic bluish white fluorescence in ultra violet light. The kachhiya was said to be of deceased.
2. The old dirty maroon colour inner lower body warmer-paizama marked 'B' bore brownish stains. It also bore greyish white stains which were stiff to feel and which produced characteristic bluish white fluorescence in ultra violet light. The paizama was said to be of accused Munna Ansari

RESULT OF EXAMINATION

1. Blood has been detected at places in the exhibit marked 'A'.
2. Semen has been detected in each of the exhibits marked 'A' and 'B'.
3. Blood could not be detected in the exhibit



marked 'B'.

4. Serological report on origin and group of blood and semen would follow.
5. Opinion on other point is not possible.”

7. Based on the materials collected during the course of investigation, the police submitted its charge-sheet on 19.02.2019 against the co-convict Munna Ansari and this appellant. The Trial Court, thereafter framed the charge of commission of the offences punishable under Section 302, 376D of the Indian Penal Code ('I.P.C.' for short) and Sections 4 & 6 of the Protection of Children from Sexual Offences Act ('POCSO Act' for short). As this appellant and the co-convict denied the charges, they were put to trial. At the trial, altogether seven witnesses were examined. The prosecution also brought on record the documentary evidence to establish the charge against this appellant and co-convict Munna Ansari which included the postmortem report (Exhibit-8) and the FSL report (Exhibit-9). The seizure list were also proved at the trial regarding seizure of the clothes of the victim and co-convict Munna Ansari.

8. After closure of the prosecution's witnesses, the Trial Court informed the persons put to trial to explain the circumstances which emerged against them based on the



evidence of the prosecution in compliance of Section 313 of the Cr.P.C.. The appellant and the co-convict denied the circumstances. The Trial Court, after having examined, scrutinized and analysed the evidence on record, has held the appellant and the co-convict Munna Ansari guilty of the offences and the charges which were framed against them i.e. Section 376D and 302 of the I.P.C. and Sections 4 and 6 of the POCSO Act. The Trial Court thereafter heard the parties on the point of sentence and imposed upon convicts including the appellant, the sentences, as have been noted at the very outset.

9. Learned counsel appearing on behalf of the appellant has submitted that the appellant's conviction is based on no evidence at all. He has further submitted that there are patent contradictions in the evidence of witnesses on the point of the appellant's participation in commission of the offence, and, therefore, such prosecution's witnesses who have attempted to support the prosecution's case are not reliable. He has further submitted that PW-2, according to the informant, had informed about the incident of him having seen Munna Ansari fleeing away from near the place of occurrence has not supported the prosecution's case and has been declared hostile. He has further submitted that out of seven witnesses examined, three witnesses,



namely, Anirudh Sah (PW-2), Chandeshwar Sah (PW-3) and Ankur Sah (4) have been declared hostile at the instance of the prosecution. Only the informant (PW-5) and his wife (PW-1) only have supported the prosecution's case. He has further submitted that evidence of PW-5 (the informant) at the trial is materially different from what he had mentioned in the F.I.R.. In his written report, which is the basis for registration of the F.I.R., he had disclosed that PW-2 (Anirudh Sah) had seen Munna Ansari and another person fleeing away in the eastern outskirts of the village. Contrary to the said initial statement made in his written report to the police, in his evidence during the course of his cross-examination, he deposed that he himself had seen the co-convict Munna Ansari fleeing away from the place near which the dead body of the deceased was found lying. He has accordingly, submitted that the evidence of PW-5 (the informant) is not reliable.

10. Though, learned Additional Public Prosecutor representing the State has submitted that the finding of conviction recorded by the Trial Court requires no interference, she has been unable to point out any evidence adduced at the trial cogent for conviction of the present appellant.

11. We have carefully gone through the impugned



judgment of conviction and the order of sentence passed by the Trial Court.

12. It is easily noticeable that, at the trial, altogether seven witnesses were examined, three of whom (PWs-2, 3 and 4) came to be declared hostile as the instance of the prosecution. PW-5 is the informant, whereas PW-1 is the wife of the informant. PW-6 is the Investigating Officer whereas PW-7 is the Doctor who proved the postmortem report. There is no iota of any evidence in the depositions of the prosecution's witnesses 1 and 5 to connect this appellant with the offences alleged. Apparently, there is no eyewitness to the occurrence of the murder of the victim. Even the presence of this appellant near place of occurrence has not been proved at the trial. The evidence of PW-5 to the effect that he himself had seen this appellant fleeing in the eastern periphery of the village does not appear to be reliable in view of the earlier version of the occurrence as was disclosed by him in his written report leading to registration of F.I.R..

13. In our considered opinion, thus, in the absence of adequate evidence for prosecuting this appellant for commission of the offences punishable under Sections 376D, 302 read with 34 of the I.P.C. and Sections 4 and 6 of the POCSO Act, benefit



of doubt deserves to be extended to him.

14. The finding of guilt recorded by the Trial Court to the extent the same relates to the appellant, in the facts and circumstances as noted above, requires interference. Accordingly, by giving the appellant benefit of doubt, he stands acquitted of the charges punishable under Sections 376D, 302 read with 34 of the I.P.C. and Sections 4 and 6 of the POCSO Act.

15. The impugned judgment of conviction dated 06.02.2020 and order of sentence dated 24.02.2020 passed by the learned 1st Additional District & Sessions Judge-cum-Special Judge (SC/ST/POCSO), Bettiah, District-West Champaran in Mainatand Police Station Case No. 03 of 2019, C.I.S. No. 02 of 2019, are hereby set aside.

16. This appeal is allowed.

17. The appellant is in custody. Let him be released forthwith from jail, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Chandra Prakash Singh, J)

Anand/Karan-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.01.2023
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