

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.198 of 2014

Arising Out of PS. Case No.-132 Year-2012 Thana- MUNGER MUFFASIL District- Munger

Ravi Kumar Singh Son of Bulbul Singh Resident of Village- Sheetalpur,
Police Station- Mufassil, District- Munger.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

Appearance :

For the Appellant	:	Mr. Bipin Kumar, Advocate.
For the State	:	Ms. S.B.Verma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 24-02-2022

The appellant who happens to be one of the accused, separately charge-sheeted in Crime No.132 of 2012 of Muffasil Police Station, Munger in Sub-Division Sadar is challenging the Judgment and Order dated 19.11.2013 and 20.11.2013 passed by the learned Additional Sessions Judge-I, Munger, in Sessions Case No.720 of 2012 thereby convicting him of the offences punishable under Sections 376 and 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life on both counts with imposition of fine of Rs.5000/- on each count. For the sake of convenience, the appellant shall be referred to in his original capacity- the accused.



2. Facts leading to the prosecution of the instant appeal can be summarized thus:

(a). The spot of the incident is stated to be a room located in Sitakund Secondary School situated at the Sheetalpur Square. P.W.6 Bhai Bharat Kumar, Police Station Officer of Muffasil Police Station, Munger, had received information regarding death of a woman at the said School on 04.07.2012. At about 07.15 P.M. of 04.07.2012, P.W.6 Bhai Bharat Kumar reached the spot of the incident and noticed that dead body of a woman in naked condition was lying in the room of that school. Blood was found spilled near head of the dead body. At some distance, one petticoat was lying. A white colour bag containing clothes was also lying nearby the dead body. On the spot of the incident, there were signs of dragging the dead body. By concluding that the said unknown woman was subjected to rape prior to her murder, P.W.6 Bhai Bharat Kumar, Station House Officer, lodged the F.I.R. with the Muffasil Police Station, Munger on 04.07.2012 itself which has resulted in the registration of Crime No.132 of 2012 for the offences punishable under Sections 302 and 376 of the Indian Penal Code against the unknown accused persons. The dead body was then dispatched for the autopsy to the Sadar Hospital. P.W.8 Dr.



Madhumita Mandal and P.W.9 Dr. Rakesh Kumar Sinha conducted the post-mortem examination on dead body, the report of which was collected during the course of investigation.

(b). Investigation of the subject crime was entrusted to P.W.7 Vinay Shanker Prasad. During the course of investigation, he recorded the statements of several witnesses. In the investigation, it was transpired that the unknown lady who came to be murdered was staying in the said Sitakund Secondary School since last few days. She was provided with the food by the cook of the school and she was sleeping in the school itself. According to the prosecution case, appellant/accused Ravi Kumar Singh and other accused persons namely Mukesh, Bhaskar and Shishu Prasad after committing rape on her committed her murder on 04.07.2012.

(c). Though there is not a single witness to the incident, the Investigator has recorded the statements of the witnesses such as Akhilesh Kumar, Abhijeet Kumar, Wakil Singh (P.W.4) and others from which it was transpired that the appellant/accused along with other accused persons were having snacks and drinking liquor in the play ground of the said school from the afternoon and then they had committed rape on the said unknown lady and subsequently murdered her.



(d). After arrest of the appellant/accused, on the basis of his confessional statement, full pant of co-accused Mukesh, his own T-shirt and shawl of the deceased came to be recovered. Then the seized articles including the petticoat of the deceased came to be dispatched for forensic examination.

(e). On completion of investigation, the charge-sheet came to be submitted against the present appellant/accused separately.

3. In support of case of the prosecution, the prosecution has examined the following witnesses to establish the circumstances that soon before and after the incident, the appellant/accused along with the co-accused were found in the vicinity of that school eating snacks as well as drinking liquor. Soon after the incident, they were found to be in frightened condition, sweating profusely:

- (i). P.W.1 Tripurari Singh.
- (ii). P.W.2 Soni Devi.
- (iii). P.W.3 Anjani Singh.
- (iv). P.W.4 Wakil Singh.
- (v). P.W.5 Chandrashekhar Singh.

Rest of the witnesses are official witnesses. P.W.6 Bhai Bharat Kumar is the first informant. P.W.7 Vinay Shanker



Prasad is the Investigating Officer. P.W.8 Dr. Madhumita Mandal who had examined the dead body and P.W.9 Dr. Rakesh Kumar Sinha are Autopsy Surgeons of the Sadar Hospital. Some documents are also exhibited during the course of investigation. Those documents are seizure list, the First Information Report as well as the printed F.I.R., inquest report and few signatures.

4. The defence of the appellant/accused was that of total denial.

5. After hearing the parties, the learned trial court was pleased to hold that the circumstantial evidence establishes that the appellant/accused had committed rape on unknown woman and then committed her murder in the room of Sitakund Secondary School with the co-accused. Accordingly, the appellant/accused is convicted and sentenced as indicated in the opening paragraph of this Judgment.

6. We heard the learned counsel appearing for the appellant/accused. He submitted that the evidence on record is not justifying the conviction recorded against the appellant/accused. Per contra, the learned A.P.P. supported the impugned Judgment and order of the learned trial court. We have also perused the records and the proceedings.



7. Undoubtedly, case of the prosecution is based on the circumstantial evidence as nobody had witnessed commission of rape and murder of the unknown lady staying in the premises of Sitakund Secondary School. By catena of decisions, it is well settled that in order to record the conviction in a case based on circumstantial evidence, the following conditions must be strictly fulfilled:

- (I). The circumstances from which the conclusion of the guilt is to be drawn should be fully established.
- (II). The facts so established should be consistent not only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
- (III). The circumstances should be of conclusive nature and tendency.
- (IV). They should exclude every possible hypothesis except the one to be proved.
- (V). There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused.

8. Now, let us examine whether the prosecution has



proved that the unknown woman, the dead body of whom was lying in the room of the Sitakund Secondary School on 04.07.2012 by P.W.6 Bhai Bharat Kumar died homicidal death.

9. Evidence on record shows that the dead body was dispatched for autopsy to the Sadar Hospital where the post-mortem examination was conducted by a team of doctors including P.W.9 Dr. Rakesh Kumar Sinha. Evidence of this Medical Officer shows that the said unknown woman lady died due to hemorrhagic shock and injuries to her vital organs such as left lung and heart. His evidence further shows that during autopsy he has noticed that there was fracture of left ribs and sternum of the dead body and those injuries were antimortem in nature. External injuries such as laceration and bruises were also found on the dead body. There is nothing in cross-examination of P.W.9 Dr. Rakesh Kumar Sinha to disbelieve his evidence regarding homicidal death of the unknown woman.

10. Apart from the injuries on the dead body, P.W.9 Dr. Rakesh Kumar Sinha has also noticed a wooden stick inserted in the vagina of the dead body. P.W.8 Dr. Madhumita Mandal is Gynecologist. She examined the dead body and also found a stick inserted in the vagina of the dead body. During post-mortem examination, it was found that the stick was 5”



long and 1/2” in diameter.

11. Thus, finding of laceration as well as bruises over the dead body apart from insertion of a wooden stick in the vagina of that female victim unerringly indicates that she was subjected to rape prior to her homicidal death. In this view of the matter, it needs to be concluded that the deceased was subjected to rape prior to her murder.

12. Now, let us examine whether it is proved by the evidence on record that the appellant/accused is a person who had participated in rape as well as murder of unknown female whose dead body was found in the Sitakund Secondary School.

13. Prior to adverting evidence of the prosecution on this aspect, it will have to be put on record that all witnesses examined by the prosecution in order to establish the circumstances leading to the death of the female victim namely, P.W.1 Tripurari Singh, P.W.2 Soni Devi, P.W.3 Anjani Singh, P.W.4 Wakil Singh and P.W.5 Chandrashekhar Singh have turned hostile to the prosecution. There is nothing in their evidence to incriminate the appellant/accused in the subject crime. Another witness who is examined by the prosecution is, Investigator i.e. P.W.7 Vinay Shanker Prasad. Apart from other witnesses, this Investigator had examined witnesses namely



Akhilesh Kumar and Abhijeet Kumar during the course of investigation, but they were not examined before the learned trial court by the prosecution for the reasons best known to it. With this it is apposite to quote the relevant provisions of Sections 161 and 162 of the Code of Criminal Procedure as well as that of Sections 27 and 145 of the Indian Evidence Act. Those read thus:

“Sections 161 and 162 of the Code of Criminal Procedure:

161. Examination of witnesses by police.-(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer trully all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he



records.

162. Statements to police not to be signed: Use of statements in evidence.-(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.”



**Sections 27 and 145 of the Indian Evidence Act,
1872 (1 of 1872):**

27. How much of information received from accused may be proved.- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

145. Cross-examination as to previous statements in writing.- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

14. By now, by catena of Judgments, it is settled that statement under Section 161 of the Code of Criminal Procedure of a witness recorded by the police is not and cannot be an evidence before the court. Use of such police statement is very limited, as seen from the provisions of Section 161 of the Code of Criminal Procedure and Section 145 of the Indian Evidence



Act. Such police statement can be used for the purpose of contradicting the witness who has made it and it cannot be used for the purpose of corroboration. Even if the contradiction from the former statement of the witness is proved through the Investigating Officer, that duly proved contradiction does not translate such contradiction into substantive evidence before the court. Such duly proved contradiction at the most can be used for impeaching the credit of witnesses examined by the police by throwing doubt on his veracity. Thus, even the duly proved contradiction surfacing on record can at the most make substantive evidence of such witness doubtful. Even in the recent Judgment of the Hon'ble Supreme Court in **Criminal Appeal No.374 of 2020 Parvat Singh and others Vs. The State of Madhya Pradesh decided on 2nd March, 2020**, this position is reiterated by holding that as per settled proposition of law, a statement recorded under Section 161 of the Code of Criminal Procedure is inadmissible in evidence and cannot be relied upon or used to convict the accused. It is further held that as per the settled proposition of law, the statement recorded under Section 161 of the Code of Criminal Procedure can be used only to prove the contradictions and/or omissions.

15. With this legal position, let us now revert back



to the evidence adduced by the prosecution. As indicated in the foregoing paragraphs, there is not a single witness other than the official witnesses to establish the circumstances which according to the prosecution established the guilt of the appellant/accused in the subject crime. As indicated in the foregoing paragraphs, the private witnesses viz. P.W.1 to P.W.5 have not supported the prosecution case and there is nothing in their evidence to incriminate the accused. Then only four official witnesses remain. Let us deal their evidence one by one.

16. P.W.6 Bhai Bharat Kumar, Police Station Officer, has only proved the F.I.R. lodged by him and had stated about the situation prevalent on the scene of the occurrence when he visited the Sitakund Secondary School at about 07.15 P.M. on 04.07.2012. His evidence shows that dead body of a unknown woman in naked condition was lying in one of the rooms of that school. Nearby the dead body, a petticoat and white colour bag was lying and there were signs of dragging that dead body. Blood was also found spilled near the head of that dead body. This indicates homicidal death and we have already held, on the basis of the medical evidence that the victim died homicidal death. Except this, evidence of P.W.6 Bhai Bharat Kumar is of no assistance to the prosecution.



17. Then comes the evidence of Investigating Officer P.W.7 Vinay Shanker Prasad. Evidence of this witness came to be recorded in a very strange manner. From his mouth, the prosecution has elicited police statement recorded under Section 161 of the Code of Criminal Procedure of independent witnesses examined by him during the course of investigation. This Investigating Officer has deposed about what witnesses such as Akhilesh Kumar, Abhijeet Kumar (not examined before the court), P.W.4 Wakil Singh (hostile witness) and other hostile witnesses such as Soni Devi, Anjani Singh and Tripurari Singh had disclosed to him during the course of investigation. P.W.7 Vinay Shanker Prasad-the Investigating Officer disclosed before the court the contents of statement of these witnesses by stating that these witnesses disclosed him that the appellant/accused along with co-accused Mukesh, Bhaskar and Shishu Prasad went to the shop of Abhijeet Kumar (a witness not examined before the court), purchased snacks from him. Abhijeet Kumar disclosed him that they are going for drinking liquor and went towards the Sitakund Secondary School. The Investigating Officer further stated that he came to know from this witness that about 03.30 P.M. he saw all accused persons near the school sweating profusely. This Investigating Officer further stated



that witness Akhilesh Kumar (not examined before the court) had stated him that about 03.30 P.M. he saw the appellant/accused along with other accused persons coming out of the school in frightened condition and at that time, pant and banyan of co-accused Mukesh was smeared with blood. The Investigating Officer proceeded to disclose before the court that from investigation of P.W.4 Wakil Singh (a witness who turned hostile), he came to know that at about 11.30 A.M., the appellant/accused along with the co-accused were eating snacks and drinking liquor in the play ground of that school and then went towards that school.

18. It is very unfortunate to note that though police witnesses such as Akhilesh Kumar and Abhijeet Kumar were not examined before the court, the learned trial court has virtually translated their police statement recorded under Section 161 of the Code of Criminal Procedure coming on record from the mouth of the Investigating Officer P.W.7 Vinay Shankar Prasad, as substantive evidence before the court and recorded conviction and resultantly sentenced the appellant for grave offences of murder and rape. Totally illegal approach was adopted by the learned trial court in doing so in the light of the legal position which we have put on record in the foregoing



paragraphs.

19. As noted in the foregoing paragraphs, P.W.1 Tripurari Singh, P.W.2 Soni Devi, P.W.3 Anjani Singh, P.W.4 Wakil Singh and P.W.5 Chandrashekhar Singh have turned hostile to the prosecution and have not spoken anything incriminating against the appellant/accused, still the contents of their police statements were brought on record through the mouth of Investigating Officer P.W.7 Vinay Shanker Prasad and those were used for recording conviction and resultant sentence, without understanding the legal position that those police statements recorded under Section 161 of the Code of Criminal Procedure cannot take place of the substantive evidence before the court. The approach of the learned trial court as such is patently illegal and cannot be endorsed.

20. Another piece of evidence relied by the learned trial court for convicting the appellant/accused of the serious offence of rape and murder is confessional statement of the appellant/accused allegedly recorded under Section 27 of the Evidence Act which has resulted in recovery of the pant, T-shirt and the shawl. We have already put on record provisions of Section 27 of the Indian Evidence Act. In the matter of **Pandurang Kalu Patil V/s. State of Maharashtra** reported in



2002 AIR (SC) 733, the legal position in that regard is sufficiently described by the Hon'ble Apex Court. The relevant portion of that Judgment reads thus:

“5. EVEN the recent decision in State of Maharashtra V/s. Damu this Court followed Pulukuri Kottaya with approval. The fallacy committed by the Division Bench as per the impugned judgment is possibly on account of truncating the word “fact” in Section 27 of the Evidence Act from the adjoining word “discovered”. The essence of Section 27 is that it was enacted as a proviso to the two preceding sections (see Sections 25 and 26) which imposed a complete ban on the admissibility of any confession made by an accused either to the police or to anyone while the accused is in police custody. The object of making a provision in Section 27 was to permit a certain portion of the statement made by an accused to a police officer admissible in evidence whether or not such statement is confessional or non-confessional. Nonetheless, the ban against admissibility would stand lifted if the statement distinctly related to a discovery of fact. A fact can be discovered by the police (investigating officer) pursuant to an information elicited from the accused if such disclosure was followed by one or more of a variety of causes. Recovery of an object is only one such cause. Recovery, or even production of object by itself



need not necessarily result in discovery of a fact. That is why Sir John Beaumont said in Pulukuri Kottaya that, “it is fallacious to treat the ‘fact discovered’ within the section as equivalent to the object produced”. The following sentence of the learned Law Lord in the said decision, though terse, is eloquent in conveying the message highlighting the pith of the ratio:

“INFORMATION supplied by a person in custody that “I will produce a knife concealed in the roof of my house” does not lead to the discovery of a knife, knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge; and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant.”

We are not unmindful of the legal position that it is absolutely not necessary that a statement of the accused which leads to recovery of any article should always be recorded in presence of the Panch witnesses or that the Panch witnesses should support that recovery by adducing evidence before the court. If evidence of the Investigating Officer who has deposed to the fact of recovery is found to be trustworthy then such evidence can be accepted. However, what is material is that the fact which is deposed to as discovered in consequence of the



information received from the accused must be a relevant fact, incriminating accused in the subject crime. In the case in hand, there is no evidence to suggest that the shawl which was recovered on the basis of the confessional statement of the appellant/accused was belonging to the deceased. There is no evidence on record to show that the pant or T-shirt which is recovered at the instance of the appellant/accused were the clothes which were found to be used during commission of the subject crime. Thus recovery of such clothes of routine use in no way, can constitute an incriminating evidence against the appellant/accused. However, this recovery of clothes is also used by the learned trial court to convict the appellant/accused in such serious offence. There is no forensic report on record which can suggest that these articles were found to be used in the commission of the subject crime. The prosecution has not explained as to why the forensic evidence is not forthcoming.

21. In this view of the matter, we see no legal evidence on record to convict the appellant/accused in the subject crime regarding the offences punishable under Sections 376 and 302 of the Indian Penal Code.

22. In the result, we proceed to pass the following orders:



(I). The appeal is allowed.

(II). The impugned Judgment and order dated 19.11.2013 and 20.11.2013 passed by the learned Additional Sessions Judge-I, Munger, in Sessions Case No.720 of 2012 is quashed and set aside.

(III). The appellant/convicted accused is acquitted of the offences punishable under Sections 376 and 302 of the Indian Penal Code. He be set at liberty forthwith if not required in any other case. Fine if any paid by him be refunded to him.

(A. M. Badar, J)

(Sunil Kumar Panwar, J)

P.S./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.02.2022.
Transmission Date	28.02.2022.

