

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.334 of 2013**

Arising Out of PS. Case No.-232 Year-2010 Thana- BAHADURPUR District- Darbhanga

Nasra Khatoon @ Baby Khatoon W/O Md. Salim R/O Village - Bibigaon
Darhar , P.S. Bahadurpur, District - Darbhanga

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Ashhar Mustafa (Amicus Curiae) Mr. Ashish Kumar Ranjan, Advocate Mr. Abu Nasar, Advocate Mr. Vikash Kumar Jha, Advocate
For the Respondent	:	Mr. Sujeet Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 22-09-2022

This appeal has been preferred by the appellant assailing the impugned judgment of conviction dated 02.03.2013 and order of sentence dated 05.03.2013 passed by learned 1st Additional Sessions Judge, Darbhanga in Sessions Trial No. 594 of 2010 arising out of Bahadurpur P.S. Case No. 232 of 2010, 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	5,000/-	One year imprisonment
201 of the Indian Penal Code	Three years R.I.	1,000/-	Six months imprisonment

2. The appellant is the wife of the informant's brother. The deceased is a four year old daughter of the informant (PW-10). They are residents of village Chakmsud Bibi Tol, Darhar under Bahadurpur Police Station of District Darbhanga.

3. *Fardbeyan* of the informant recorded by the Sub-Inspector of Police, Hari Narayan Singh, S.H.O (PW-12), Bahadurpur police station on 20.07.2010 at 19.45 hours is the basis for registration of the First Information Report ('F.I.R.' for brevity).

4. The prosecution's case, as disclosed in the *fardbeyan*, is that the informant (PW-10) and his wife (PW-11) had gone to fetch grass from *Chaur* (a large tract of low land) in the village on 20.07.2010, and on return at 6:00 pm, they found that the deceased was not there in the house. (We must clarify here itself that the wife of the informant, Sahjahan Khatoon has been incorrectly described as PW-9 in paragraph 2 of the impugned judgment of the trial court, visibly because of



similarity in the names of PW-9 and PW-11.) Later, they learnt that the deceased was seen accompanying the appellant while going to answer nature's call towards a nearby orchard. The appellant, however, returned home alone. The informant's younger brother, Hakim Shah (PW-7), had followed the appellant upto a short distance when she was going towards the orchard. When the appellant returned alone from the orchard, PW-7, Hakim Sah inquired from the appellant about the deceased, whereupon she replied that the deceased had gone to a shop. The villagers had also assembled, and on stricter interrogation, she took the villagers towards the said orchard and on the basis of disclosure made by her, dead body of the deceased was recovered from a wet muddy land, concealed by weeds (*ghaas-phus*). The informant thereafter, brought the deceased from the orchard to his house. The appellant was apprehended by the villagers and was kept in her house. The informant further disclosed in the *fardbeyan* that the appellant's younger brother (the appellant's husband) had gone out in the afternoon for begging (*maang-chhaang*). Further, nearly 25 days before the said date of occurrence, the appellant had committed theft of ornaments of the informant which was recovered from the possession of the appellant. He further



disclosed that 20 days ago, when the informant and his wife were sleeping in the night, they were told by the informant's mother that some white material was lying in the street adjacent to their house. When they went there, they found their two-year old daughter lying dead. They considered her death to be of snake-bite. He further disclosed that his younger brother Md. Salim, the husband of the appellant, loved the informant's both children a lot which was a cause for the appellant's annoyance towards the children. In such background, he suspected that the appellant might have killed the deceased by strangulating her.

5. The police, upon completion of investigation, submitted its charge-sheet against the appellant for the commission offences punishable under Sections 302 and 201 of the Indian Penal Code (I.P.C., for brevity). Cognizance was subsequently taken and the charge was framed by the trial court for commission of offences punishable under Sections 302 and 201 of the I.P.C.. The trial commenced, as the appellant denied the charges levelled against her. At the trial, 12 witnesses were examined including the informant (PW-10), his wife (PW-11) and Hakim (PW-7). The doctor who had conducted the postmortem report was examined as PW-2 and the Investigating Officer as PW-7.



6. In addition, the prosecution proved documentary evidences i.e. Exhibit-1, signature of Guddu Shah on inquest report; Exhibit-2 the postmortem report; Exhibit-3, Medicological examination of the skeleton of Nargish Khatoon; Exhibit-4, the signature of Md. Imtiyaz (PW-3) on the seizure list; Exhibit-1/1, signature of Mahavir Paswan Exhibit-1; Exhibit-4/1, signature of Mahavir Paswan (*Chaukidar*); Exhibit-5, signature of the informant (PW-10) on the inquest report of the deceased Praveen Khatoon; Exhibit-6/1 signature of the I.O (PW-12) of exhibit-6; Exhibit-7, signature of the informant of *fardbeyan*; Exhibit-8, the endorsement of S.I. on the F.I.R; Exhibit-8/1 signature of one Arun Kumar Singh, not examined on Exhibit-8; Exhibit-9, seizure list; Exhibit-10, seizure list; Exhibit-11, confessional statement of the appellant; Exhibit-12, the inquest report.

7. Upon scrutiny of the evidence of the prosecution witnesses as well as the documentary evidence adduced by the prosecution at trial, the trial court, by the impugned judgment dated 02.03.2013 has concluded that the prosecution has been able to prove its case beyond all reasonable doubts to the effect that the appellant had committed murder of the deceased and had caused disappearance of the body of the deceased to screen



herself from legal consequences. Accordingly, the appellant stood convicted of the charge punishable under Section 302 and 201 of the I.P.C. by the impugned judgment and order of the trial court. By the impugned order dated 05.03.2013, the appellant has been sentenced to undergo imprisonment for life with fine for the proved offences punishable under Section 302 of the I.P.C.. For the offence punishable under Section 201 of the I.P.C., she has been sentenced to undergo rigorous imprisonment for life with fine.

8. This appeal was preferred by Mr. Jitendra Narain Sinha, a learned Advocate of this Court. When the appeal was taken up for final hearing firstly on 12.08.2022 on-line through video conference, there was no representation on behalf of the appellant. Similarly, on 26.09.2022 also, no one had appeared for the appellant when hearing of the appeal was again taken up on-line. Hearing of the appeal was adjourned to 29.08.2022 to be taken up in physical mode. On 29.08.2022 also, there was no representation on behalf of the appellant. Considering no representation on behalf of the appellant on multiple occasions, the Court deemed it proper to request Mr. Ashhar Mustafa, a learned Advocate of this Court to assist this Court as an *Amicus Curiae* to present the case on behalf of the appellant.



9. Accordingly, we have heard Mr. Ashhar Mustafa learned *Amicus Curiae* to represent the case of the appellant and Mr. Sujeet Kumar Singh, learned Additional Public Prosecutor for the State at length.

10. Mr. Ashhar Mustafa, learned *Amicus Curiae* representing the case of the appellant has submitted that it is not a case where the dead body of the deceased was discovered on the disclosure made by the appellant to the police. He has further submitted that there is no conclusive evidence adduced at the trial to reach a conclusion that the recovery of the dead body of the deceased was made by the informant/villagers of the deceased on the disclosure made by the appellant. He has contended that the appellant came to be put on trial mainly on the basis that she had confessed her guilt before the police during the course of investigation. He has argued that the only circumstantial evidence available against the appellant is that the deceased was last seen with the appellant while going towards the orchard from where the dead body of the deceased was recovered. He has contended that the so-called confessional statement of the appellant said to have been made before the police during the course of investigation has no evidenciary value at all. He has further submitted that on the point of motive



behind the commission of the offence by the appellant, there are conflicting evidences inasmuch as the motive, as disclosed in the evidence of the informant at the trial, is completely different from the one disclosed in the *fardbeyan*.

11. He has submitted that the circumstantial evidence, of the appellant having been seen last with the deceased, is inherently weak piece of evidence to justify the appellant's conviction on that sole basis.

12. Elaborating his submissions, he has argued that, on the one hand, it is the prosecution's cases that the dead body of the deceased was recovered on disclosure and at the instance of the appellant, the informant (PW-10) has disclosed in his deposition in paragraph-9 that the dead body of the deceased was recovered by the informant with the aid of the villagers and, therefore, it cannot be said that the said recovery was made on the disclosure or at the instance of the appellant. He has submitted that if the prosecution's version as disclosed in the *fardbeyan*, is to be believed, the informant's brother (PW-7), had seen the deceased accompanying the appellant and going towards orchard and he (PW-7), had followed them for a while. Subsequently, he was asked by this appellant to return midway. To counter the said case of the prosecution, as disclosed in the



F.I.R, he has referred to the deposition of PW-6 Naseema Khatoon (own cousin of the informant). She (PW-6) has deposed in paragraph-5 of her evidence that PW-7 had gone along with the appellant and the deceased towards the orchard and they had returned together. He has accordingly submitted that the prosecution's case, even of the deceased having been seen last with the appellant, become doubtful. Further, it is the prosecution's case that soiled clothes of the appellant were recovered by the police subsequent to the confessional statement made by the appellant. Recovery of the soiled clothes serves no purpose for the reason that the clothes were not exhibited nor they were sent for any chemical examination to establish the appellant's presence at the place where the dead body of the deceased was recovered, he contends. The Court's attention has been drawn to the evidence of the prosecution witnesses, particularly PWs-4, 5 and 8 on the point of the colour of the clothes which the appellant wearing while going towards the orchard with the deceased. Whereas PW-4 in paragraph 1 of her deposition has stated that the appellant was wearing orange coloured clothes. PW-5 in paragraph 7 as deposed that she was wearing sky-blue clothes. PW-8, on the other hand, has deposed that the clothes were red in color. These conflicting evidences,



he contends casts serious doubt on the prosecution's case that the appellant was seen on the date of occurrence by these witnesses, let alone with the deceased going towards the orchard. He has argued that it is definite case of the prosecution that the dead body of the deceased was already brought to the house of the informant, before the police came to the house of the informant, where inquest report was prepared. Referring to the evidence of PW-7, who claimed to be present at the place from where the dead body of the deceased was recovered, at the time of recovery he has submitted that in paragraph 4 of his deposition he has stated that he had seen the dead body of the deceased for the first time in the courtyard of the house, contradicting his own statement.

13. Mr. Sujeet Kumar Singh, learned Additional Public Prosecutor representing the State has, *per contra*, submitted that there is overwhelming evidence on record which goes to suggest that the dead body of the deceased was recovered from the orchard on disclosure made by the appellant. He has further submitted that the prosecution's witnesses are consistent in their evidence that the appellant was last seen with the deceased as both of them were seen going together towards the orchard from where the dead body of the deceased was recovered. He has



further submitted that the appellant had confessed her complicity before the villagers, few of whom have been examined at the trial who have proved this fact. He has further submitted that though there is no direct evidence to prove that the deceased was killed by the appellant, there are clinching circumstantial evidence to establish the act of the appellant of killing the deceased. According to him, the prosecution has been able to establish the motive behind the occurrence at the trial. The appellant having been last seen with the deceased and, subsequent recovery of the dead body of the deceased on the basis of disclosure made by appellant, are clinching, cogent and compelling circumstantial evidence to establish the appellant's guilt, which have been duly considered by the trial court while recording appellant's conviction. He has argued that the finding recorded by the trial court does not deserve any interference by this Court in view of the incriminating materials available on records and the evidence adduced at the trial.

14. We have carefully perused the impugned judgment and order of the trial court. We have also perused the evidence adduced at the trial and the lower court's records. We have given our thoughtful consideration to rival submissions made on behalf of the parties.



15. Before we proceed to analyse and scrutinize the evidence on record to test the correctness or otherwise of the finding of conviction recorded by the trial court, we consider it apt to notice at this stage itself that though there is a whisper in the prosecution's case that another daughter of the informant (Nargis) was also killed by the appellant nearly 20 days before the occurrence in question, there is no evidence that any suggest complaint/F.I.R. has been lodged in connection with death of Nargis. It is the informant's own case that he had presumed that the death of Nargis have been caused by snake bite.

16. It is evident from the prosecution's case that there is no eye witness to the occurrence of killing of the deceased by this appellant. Apparently the prosecution attempted to establish its case at trial on circumstantial evidence.

17. Mr. Ashhar Mustafa, learned *Amicus Curiae* has rightly pointed out that the prosecution's evidence in the present case rests on following circumstances:-

- (i) Recovery of the dead body of the deceased and at the instance of the appellant,
- (ii) The deceased was last seen with the appellant going towards the orchard,
- (iii) The appellant confessed her guilt before



the villagers and the police,

(iv) Soiled clothes of the appellant were recovered from her house on the next day of the occurrence, and

(v) There was a motive for the appellant to have committed the offence.

18. The prosecution's case that the dead body of the deceased was recovered on the basis of disclosure of the appellant is contradicted by the evidence of the informant himself inasmuch as he has deposed in paragraph-9 of his deposition that he was not present at the place from where the dead body of the deceased was recovered. Based on the evidence of informant, it is easily seen that the police had come to the informant's residence after the dead body of the deceased was brought from the orchard by the informant. The inquest report was prepared in the house of the informant. P.Ws 3, 4, 5 and 7 in their deposition have mentioned that the dead body of the deceased was recovered from the orchard in the presence of the police. Such depositions, in our considered view, contradict the depositions made by P.W.-10 (the informant), P.W.-6 and P.W.-12 who categorically testified that the police reached the house of the informant after the dead body was recovered.



19. There is one noticeable contradiction in the evidence of P.W.-7 (informant's brother) and P.W.-6 (one of the cousins of the informant). Whereas P.W.-7 deposed in his evidence that he had seen the deceased going along with appellant towards the orchard and after having followed them for a while, he returned mid-way; P.W.-6, on the other hand, deposed that she had seen P.W.-7 going with the appellant towards the orchard and subsequently returning together with her.

20. It is the prosecution's case that on the basis of confessional statement of the appellant, her soiled clothes were recovered by the police. Even if it is presumed that the recovery of the soiled clothes of the appellant was made basis of the confessional statement of the appellant, there is absolutely no evidence of any nature to connect the soiled clothes or mud on the clothes with the place of occurrence.

21. Further, learned counsel for the appellant has rightly pointed out the contradictions in the evidences of the P.Ws 4, 5 and 8 on the point of the colour of the clothes which the appellant was wearing. P.W.-4, in his deposition states that the appellant was wearing clothes of orange colour, P.W.-5, in his evidence describes the colour as sky-blue and P.W.-8 as red.



These contradictions in the evidence of P.W.s-4, 5 and 8 cannot be treated to be so ordinary as to be ignored.

22. It is well settled legal position that if the prosecution rests its case on circumstances, the circumstantial evidence should be so cogent and compelling as to convince the Court that on rationale hypothesis other than murder caused by the accused cannot be accounted for.

23. On the point of extra judicial confession made by an accused, the Supreme Court has held in a recent decision in case of *Chandrapal v. State of Chhatisgarh* reported in *AIR 2022 SC 2542* that extra judicial confession is a weak kind of evidence and unless it inspires confidence or is corroborated by some other evidence of clinching nature, ordinarily conviction of the offence of murder should not be made only on the basis of extra judicial confession. In the same judgment in case of *Chandrapal v. State of Chhatisgarh* (supra), the Supreme Court has held that 'Last seen together' can also not be a basis to connect an accused with the alleged crime unless there is clinching and cogent evidence produced by the prosecution. In the absence of other links in the chain of circumstantial evidence, an accused cannot be convicted solely on the basis of 'Last seen together' even if the version of the prosecution



witnesses in this regard is believable, the Supreme Court has held.

24. In the present case, there are two prosecution witnesses, namely, P.W.-6 and P.W.-7 who have deposed that the appellant was last seen with the deceased on the alleged date of occurrence of going towards the orchard. Their evidences are however visibly conflicting for the reason that, on the one hand, P.W.-7 has deposed that after having seen them going towards the orchard, he had followed them to some distance and thereafter returned. P.W.-6, on the other hand, has deposed that she had seen P.W.-7 following the appellant and the deceased and thereafter returning back home.

25. Considering the apparent substantial contradictions in the deposition of witnesses coupled with the fact that the prosecution miserably failed to establish that the dead body of the deceased was recovered on disclosure made by the appellant, in our view, the appellant deserves to be given benefit of doubt. In our considered view, the chain of circumstances proved at the trial cannot be held to be so complete as to record guilt of the appellant of murdering the deceased as the only possible view, ruling out possibility of all other views. In the aforesaid circumstance, in our view,



impugned finding recorded by the trial court of conviction cannot be upheld deserves interference by this Court.

26. The impugned judgment of conviction dated 02.03.2013 and order of sentence dated 05.03.2013 passed by the learned 1st Additional District and Sessions Judge, Darbhanga in Sessions Trial No. 594 of 2010 arising out of Bahadupur P.S. Case No. 232 of 2010 is hereby set aside.

27. This appeal is accordingly allowed.

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

29. Before we part with the present judgment, we record our deep sense of appreciation for the able assistance extended by Mr. Ashhar Mustafa, learned *Amicus Curiae* who has assisted this Court with all sincerity and to the best of his abilities for this Court to reach a definite conclusion in this matter. For the able and sincere assistance extended to this Court as *Amicus Curiae* by Mr. Ashhar Mustafa, in the absence of any representation on behalf of the appellant, we direct the Patna High Court Legal Services Committee to pay to Mr. Mustafa a token amount of Rs. 15,000/- within one month.

30. Let a copy of this order be communicated to the



Secretary, Patna High Court Legal Services Committee.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

K.K.RAO/annpurna
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AFR/NAFR	NAFR
CAV DATE	NA
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