

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.220 of 2022

Arising Out of PS. Case No.-89 Year-2019 Thana- RANIGANJ District- Araria

Guddu Kumar Yadav @ Guddu Yadav Son Of Ashok Yadav Resident Of
Village - Kala Baluaa, P.S.- Raniganj, District - Araria.
... .. Appellant

Versus

The State of Bihar
... .. Respondent

Appearance :
For the Appellant : Mr. Viveka Nand Singh, Advocate
For the Respondent : Mr. Binay Krishna, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH
and
HONOURABLE JUSTICE SMT. GUNNU ANUPAMA
CHAKRAVARTHY
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. GUNNU ANUPAMA
CHAKRAVARTHY)

Date : 10-11-2023

This appeal has been filed against the judgment and
order dated 03.01.2022 sentence dated 22.01.2022, passed by
Special Judge, POCSO, Araria in Special POCSO Case No. 11
of 2019 (arose out of Raniganj P.S. Case No. 89 of 2019)
wherein the appellant was convicted for the offences punishable
under Sections 376, 302 of the I.P.C. and Section 3(2)(v) of the
S.C./S.T. Act.

Appellant's Name	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Guddu Kumar Yadav	376, 302 of the I.P.C.	R.I. for life	50,000/-	S.I. for three months.
	3(2)(V) of the S.C./S.T. Act	R.I. for life	50,000/-	S.I. for three months.
	201 of the I.P.C.	R.I. for three years	10,000/-	S.I. for ten days.



2. Out of the slapped amount i.e. Rs. 1,60,000/- (One Lakh Sixty Thousand Rupees) 75% will be given to the parent of the victim/deceased as the provisions laid under Section 357 of the Cr.P.C. All the sentences have been directed to run concurrently and the appellant is entitled to set out under Section 428 of the Cr.P.C.

3. The criminal law was set into motion basing on the complaint given by P.W. 9. The facts culled out the written application are as follows:

4. The daughter of the informant named Chandani Kumari, aged about 17 years went to fetch grass on 21.02.2019 at 04:00 P.M. and she did not return back to home. The parents of the said Chandani Kumari began to search for her with the help of villagers and could not found her for which an application has been made to the S.H.O., Araria dated 27.02.2019 (after 6 days of missing of the girl).

5. Basing on the said application a case was registered in Crime No. 87 of 2019 on 27.02.2019 for the alleged offence punishable under Section 363, 365 and 366A of the I.P.C. against unknown offenders. Later, Section of law was altered 302, 201, 376 of I.P.C. and Section 4 of the POCSO Act and



Section 3(2)(V) of S.C./S.T. were added in the First Information Report.

6. During the course of investigation, P.W. 8, the Investigating Officer visited the place of alleged occurrence and learnt that there was a love affair between the appellant and the victim and further, the Investigating Officer came to know from the villagers that a dead body of unknown girl was found buried in front of Maize field of one Devendra Choudhary in a Canal. Thereafter, the dead body was exhumed out of the soil by the Police with the help of the villagers and P.W. 9/father of the deceased identified the dead body as that of his daughter, basing on the clothes found over the dead body. The appellant was arrested by the Police on 02.03.2019. On interrogation, the appellant made his confessional statement, which reveals about the love affairs between the appellant and the deceased and also about committing of the alleged murder and concealing the dead body. Pursuant to the confession statement of the appellant, the Police recovered one spade and a mobile phone. After completion of investigation, the Investigating Officer laid a chargesheet against the appellant for the offences punishable under Section 302, 376, 201 of I.P.C. and Section 4 of POCSO Act and also under Section 3(2)(V) of the S.C./S.T. Act.



7. During the course of trial, the Sessions Court framed charges against the appellant for the offences punishable under Section 302, 376, 201 of I.P.C., Section 4 of POCSO Act and also under Section 3(2)(V) of the S.C./S.T. Act.

8. In order to prove the case against the appellant beyond the reasonable doubt, the prosecution has examined 15 witnesses i.e. P.W. 1 is the witness to the written application, P.W. 2 to 5 are the known persons to the informant, P.Ws. 6 & 15 are the Medical Officers. P.Ws. 7 and 9 are parents of the deceased, P.W. 8 is the ASI and P.Ws. 10 to 14 are panch witnesses.

9. In order to support the oral evidence of the prosecution's witnesses, the prosecution also brought on record documentary evidence which is exhibited as Exhibit 1 to 10 and also material objects 1 and 2 have been marked. Ext. 1-Whole Post Mortem Report, Ext. 2, 2/1, 3, 3/1, 4, 5, 6 and 7 are the signatures of by Rahul Kumar, Manish Kumar Rajak and Amrendra Yadav on written application for which case was registered P.S. Case No. 89 of 2019 on written application by S.H.O. Sambhu Kumar, Formal F.I.R., confessional statement of appellant, seizure list, arresting memo of appellant and requesting letter to send Viscera for examination, Ext. 8 is



written application, signed by informant and Material Object 1, 1/I and 1/II is spade including bet, one Nokia Mobile and one Jio Mobile.

10. The appellant was examined under Section 313 of the Cr.P.C. upon bringing to his notice the incriminating evidence of the prosecution and the appellant denied the prosecution evidence and reported no defence offence.

11. Considering the entire material on record, the trial court convicted the appellant for the aforesaid offences as stated (Supra).

12. It is the specific contention of the learned counsel for the appellant that none has witnessed the commission of the alleged murder of the deceased and the entire conviction is based on the confessional statement of the appellant, which is erroneous and perverse. It is further alleged by the learned counsel for the appellant that the alleged love affair between the appellant and the deceased was not accepted by the parents of the deceased and, therefore, the prosecution has miserably failed to bring home the guilt of the appellant for the aforesaid offences and, therefore, the appellant is entitled to benefit of doubt.



13. On the other hand, learned Additional Public Prosecutor for the State of Bihar contended that there is no error or irregularity in the order passed by the trial court, and therefore, it needs no interference and prayed to confirm the judgment of the trial court.

14. We have given a thoughtful consideration to the submissions made by the learned counsel for the appellant as well as the learned Additional Public Prosecutor for the State of Bihar and the point of determination in this appeal was that:

(i). Whether the prosecution is able to bring home the guilt of the appellant for the charged offences under section 376, 302 of the I.P.C. and Section 3(2)(V) of the S.C./S.T. Act beyond reasonable doubt?

(ii). Whether the trial court has rightly convicted the appellant for the said offences?

15. The cardinal principles of the criminal law is that the prosecution shall prove the guilt of the appellant beyond reasonable doubt and that the appellant shall be presumed to be innocent, unless proved guilty.

16. We have perused the entire evidence on record. On perusal of the said material, it is evident that there are no direct



witnesses to the alleged incident and the entire case rests upon circumstantial evidence. In a case of circumstantial evidence, it is for the prosecution to prove link the chain of events in order to connect the crime with the appellant to the extent that guilt of the appellant is the only hypothesis ruling out possibility of any other inference. Any missing of the link of chain of the events, benefit of doubt has to be extended to the appellant. In a case of circumstantial evidence, generally the motive, extra judicial confession last seen theory, discovery of recovery of material object at the instance of the appellant shall be taken into consideration. Each of the circumstances has to point out the guilt of the appellant and it should form a complete ring and no link shall be missing.

17. The Hon'ble Apex Court in catena of judgments have held that there must be a complete chain of evidence which would lead to conclusion that the appellant was the only person who could have committed the offences and none else in a case of circumstantial evidence. It is well settled law of evidence that there must be direct evidence and the fact must be proved either by direct evidence or circumstantial evidence.

18. It is pertinent to mention that the entire case rests upon the confessional statement of the appellant to the Police



Officers, is hit by Section 25 of the Indian Evidence Act. As per the Section 27 of the Indian Evidence Act, the information given by the appellant during the course of confession as to discovery of any material object is only admissible and not the entire confession.

19. P.W. 1 is the witness to the written application preferred by the father of the deceased. His evidence disclose that the deceased was found missing from 6-7 days back prior to the filing of the written application and that the victim was aged 15 years and that he does not know whether the dead body of the victim was found or not?

20. P.Ws. 2 to 5 are also known persons to the informant i.e. father of the victim. But they deposed before the Court that they do not know the cause of death of the deceased, but came to know that the victim girl was missing. P.W. 5 further deposed that he was not aware of that the appellant was given time of two or three days in Panchayat and does not know that the appellant had love affair with the deceased or not?

21. P.Ws. 7 and 9 are parents of the deceased. P.W. 7 is the mother of the deceased. She testified that her husband had preferred a written application to the Police and later came to know about the death of the deceased and that the dead body



was found on the road. She also testified she did know who murdered her daughter she was declared as hostile witness. P.W. 9 is the father of the deceased. His evidence disclose that the deceased was aged about 17 years and specifically stated that the appellant is no way connected with the incident and he does not know about the cause of the death of the deceased.

22. P.W. 8 is the ASI, who received the written application and registered the case against the unknown offender. Later, he inspected the place of occurrence, recorded statement of the witnesses, recovered the dead body, conducted inquest over the dead body of the deceased, later got it identified by the deceased's relatives and further, after recovery of the dead body he again recorded the statements of P.Ws. 7 and 9. His evidence further disclose that he suspected the appellant, arrested him and the appellant confessed his guilt of committing the offences. Pursuant to the confession statement of the appellant, they assumed the dead body of the deceased.

23. P.W. 10 is the panch witness for the recovery of material objects i.e. the spade and two Mobiles, recovered from the place of incident. In the cross-examination, it is specifically admitted by the panch witness i.e. P.W.-10 that the spade was recovered from the place of incident and both the Mobiles were



recovered from the house of the appellant and there are no slips marking on exhibit i.e. the spade for identification.

24. P.W. 11 is also a panch witness. His evidence disclose that the dead body of the deceased was recovered from the south dam in his presence. P.Ws. 11 to 14 are the panch witnesses who speak about the recovery of the dead body. All the four witnesses admitted in their cross-examination that they have come to the Court at the instance of *chaukidar* Upendra Thakur who asked them to depose in that manner, therefore, much weightage cannot be given to the evidence of P.Ws. 11 to 14.

25. P.W. 6 is the Medical Officer. The evidence of P.W. 6 clearly disclose that on 01.03.2019, he conducted the post-mortem examination on the dead body of the deceased, aged 17 years. In the cross-examination P.W. 6, Medical Officer admitted that he was posted as Medical Officer on 01.03.2019 at Sardar Hospital, Araria in order to conduct post-mortem examination of the dead body of the deceased and he observed the post-mortem examination and Dr. R.K. Mandal has given the post-mortem report i.e. Exhibit-1. In the cross-examination it is specifically stated that he is just an observing authority ante-mortem or post-



mortem was not conducted by him rather it was by Dr. R.K. Mandal.

26. P.W.15 is another doctor who conducted the post-mortem examination of the deceased along with P.W.6 and found the following injuries:-

(i) External injuries -

Partially decomposed body, foul smelling intestine out from abdomen, partially right leg avulsed, muscle complete out bone exposed.

(ii) On dissection -

On opening the cranial cavity, thoracic cavity and abdominal cavity partially decomposed and intact and insitu.

However, following Visceries were preserved for chemical analysis and handed over the *Chaukidar* Upendra Thakur on the same time-

- (A) Stomach with its content
- (B) One Kidney
- (C) Loop of small & large intestine
- (D) A portion of heart, lungs, liver, spleen and portion of brain.

Note :- Uterus was non-pregnant.



It is specifically opined by P.W.-15 that no definite cause of death can be given regarding the cause of death, following Visceries were preserved for chemical analysis, if needed.

27. It is further testified by P.W.15 that Dr. J.N. Mathur was observer of this post-mortem and the post-mortem report was written by him, which is at Exhibit P9. The Forensic Science Laboratory, Patna, report regarding the deceased organs is at Exhibit P.10 as a whole.

28. In the cross-examination, it is specifically deposed by P.W.15 that he did not find any sign of sexual assault on the body of the deceased. On perusal of the FSC report it is evident that no metallic, alkaloidal, glycosidal, pesticidal or volatile poison could be detected in the contents of viscera.

29. On perusal of the medical evidence, it is evident that no definite the cause of death of the deceased was explained by the doctors i.e., P.W.-6 or P.W.-15. Further, it was specifically deposed that there is no sign of sexual of assault on the dead body of the deceased. Further, the medical evidence disclose that the body was completely decomposed and the muscle of the dead body was torn.



30. In a case of homicidal, it is for the prosecution to prove that the appellant has inflicted the injury on the deceased either with hands or with any weapon with the knowledge that such injury is likely to cause death of the deceased. The evidence of the prosecution witnesses other than the doctors, only disclose that the victim was missing from the house and the dead body was recovered after seven days of her missing that too in a decomposed state.

31. Admittedly, there are no direct witnesses to the incident and in a case of circumstantial evidence, it is for the prosecution to prove that the entire chain of the events are complete and have formed a ring. In the present case. There is a missing of links in the chain of events and, therefore, the benefit of doubt has to be extended to the appellant herein.

32. Furthermore, the record reveals that the trial Court has convicted the appellant for the offences punishable under Section 376, 302, 201 of the I.P.C. and Section 3(2)(V) of the S.C./S.T. Act. None of the witness have testified that the appellant have abused the victim on the name of her caste in order to attract offences punishable under Section 3(2)(V) of the S.C./S.T. Act, further no evidence on record to prove that victim was sexually assaulted prior to her death.



33. In the absence of the oral or documentary evidence it is not proper to convict the appellant, therefore, the conviction and sentence against the appellant in POCSO case passed by Special Judge, POCSO, Araria is unsustainable and deserves to be set aside.

34. In result, the appeal is allowed by setting aside the judgment dated 03.01.2022 and sentence dated 22.01.2022, passed by the Special Judge, POCSO, Araria in Special Case No. 11 of 2019 for the offences punishable under Section 376, 302 and 201 of the I.P.C. and Section 3(2)(V) of the S.C./S.T. Act.

35. The appellant is acquitted for all the above said offences and he shall be released forthwith if not required in any other case.

(Chakradhari Sharan Singh, J)

(Gunny Anupama Chakravarthy, J)

Shanu,Amit/-

AFR/NAFR	AFR
CAV DATE	N/A
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