

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.475 of 2014

Arising Out of PS. Case No.-109 Year-2013 Thana- HUSSAINGANJ District- Siwan

Chandrama Yadav Son of Deen Bandhu Yadav Resident of Village
Bhawrajpur, P.S. Andar, District Siwan.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vishwajeet Kumar Mishra, Advocate
Mr. Ashutosh Tripathi, Advocate
Mr. Aakash Choudhary, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 11-07-2023

Heard Mr. Vishwajeet Kumar Mishra, learned

Advocate for the appellant and Mr. Binod Bihari Singh for
the State.

2. The appellant has been convicted under
Sections 376, 302 and 201 of the IPC and has been
sentenced to undergo R.I. for the remainder of his life, fine
of Rs. 5000/- for the offence under Section 302 IPC and
R.I. for ten years, fine of Rs. 5000/- for the offence under
Section 376 IPC and R.I. for five years for the offence



under Section 201 IPC and in default of payment of fine, simple imprisonment for one year *vide* judgment of conviction and order of sentence dated 10.04.2014 and 16.04.2014 respectively, in connection with G.R. No. 2185 of 2013/Sessions Trial No. 372 of 2013, arising out of Hussainganj P.S. Case No. 109 of 2013 passed by the learned Special Judge, Siwan.

3. The appellant is said to have raped and killed a 5½ year old girl. The father of the deceased *viz.* Binod Kumar Yadav (P.W. 1) had lodged the FIR on 03.06.2013 alleging that on 02.06.2013, he along with his daughter (deceased) had gone to the house of Panchratan Yadav (P.W. 3) whose daughter was to be married to the son of the co-brother of P.W. 1. Since his daughter had fallen asleep, she was left behind in the vehicle with which the Barat party had come to the house of P.W. 3 and the appellant who drove the vehicle was given the charge of the daughter of P.W. 1. After the ceremonies inside the courtyard of P.W. 3, when P.W. 1 came out of his house



looking for his daughter, he did not find either the vehicle or the driver. Prem Kumar Yadav (P.W. 2), a relative of P.W. 1 informed him that he had seen the driver taking the vehicle towards the pond in the village. This led P.W. 1 along with others to go up to the pond in search of his daughter.

4. All the persons accompanying P.W. 1 to the pond found the vehicle parked near the pond and the dead body of his daughter lying on the banks of the pond. The lower garment of the deceased was missing. Blood was oozing out from her mouth and genitalia. It was clear to P.W. 1 and others that the deceased had been ravished brutally leading to her death. The assertion of P.W. 1 therefore was that the appellant had raped and killed his daughter.

5. On the basis of the written report of P.W. 1 referred to above which was scribed by Vijay Choudhary (P.W. 6), Hussainganj P.S. Case No. 109 of 2013 dated



03.06.2013 was instituted for investigation for the offences under Sections 302, 376 and 201 of the IPC.

6. On investigation, the case was found to be true against the appellant whereupon he was put on trial as aforesaid.

7. The Trial Court, after examining nine witnesses on behalf of the prosecution, convicted and sentenced the appellant as aforesaid.

8. Mr. Vishwajeet Kumar Mishra, learned Advocate for the appellant has submitted before us that notwithstanding the fact that the deceased was left behind in the vehicle of which the appellant was the driver and that vehicle was not seen at the place where it had been parked, the chain of evidence does not completed for the Trial Court to convict the appellant for the offences under Sections 376 and 302 of the IPC.

9. The charge under Section 201 IPC, it has been argued, is also not made out as there is no evidence of any attempt at hiding the dead body. The dead body allegedly



was found in the open on the banks of the pond, right in the middle of the village. So far as the act of rape is concerned, the accusation, according to the appellant, is highly presumptive. There could have been a situation where the appellant may have come out of his vehicle for personal needs and in the meantime the deceased may have been taken away by someone and ultimately killed. Though there is no evidence to this effect but the possibility of such a situation cannot be ruled out.

10. For surely coming to the conclusion that the appellant had raped and killed the deceased, it has been argued, there should be evidence of his having either committed rape on her, either in the vehicle or at some other place and then the dead body was thrown for concealing it. The connecting links are absent. There is no arrest memo of the appellant indicating the manner in which he was arrested. The villagers who allegedly arrested him have neither been examined nor their names have been disclosed by the other witnesses, who all had gone to



the place where the dead body was found and shortly thereafter, as the prosecution case unfolds, the appellant was arrested with the aid of the villagers.

11. The complete absence of any evidence with respect to the arrest of the appellant on the same day shortly after the dead body was spotted, makes the prosecution case against the appellant doubtful.

12. He further submits that from the post-mortem report, it would appear that the deceased was not subjected to any brutal sexual act. She had only one bruise near her eye but no mark of violence near her genitalia.

13. Be it noted that the hymen was found torn but the evidence was not conclusive with respect to any penetration for rupturing of hymen.

14. Apart from this, it has been urged that if the statement of Prem Kumar Yadav (P.W. 2) is to be believed, half of the dead body was submerged in the water of the pond. In that event, even the blood stains would not have been found.



15. Lastly, it has been submitted that there is no evidence on record as to such statement of the appellant which had led to the recovery of a blood and semen stained under-garment of the deceased, for such information to be admitted in evidence under Section 27 of the Evidence Act.

16. Thus, a concerted effort appears to have been made by the investigator to bring the appellant to within the mischief of the offences charged against him and to justify the line of investigation that it was the appellant only and nobody else who had committed this offence.

17. Mr. Mishra, therefore laments that such over-drive on the part of the investigator has only led the Trial Court believe the theory that the deceased was raped and killed by the appellant only, which may not be the case.

18. Mr. Mishra has further contended that the Trial Court has committed a blunder in sentencing the appellant for the remainder of his life, disentitling him



from any remissions, to which the appellant would otherwise have been entitled.

19. On that score also, the contention is that the judgment and order of conviction reflects complete non-application of mind and is against the line of decisions of the Supreme Court and statutory provisions in that regard.

20. As opposed to the aforementioned contentions, Mr. Binod Bihari Singh has submitted that the very fact that the deceased was left behind in the vehicle of which the appellant is the driver and who was made in-charge of the deceased completely shuts any possibility of the deceased having been killed by anybody else except the appellant.

21. Had that not been the case, the appellant would have, in his statement under Section 313 Cr.P.C., would have disclosed the circumstance under which he had left the vehicle and the deceased unattended for sometime. No reason has been ascribed by the appellant for having taken the vehicle away from the place where it was parked (in front of the house of Panchratan Yadav/P.W. 3) and



park it near a pond at a distance of about half a kilometer from the house of P.W. 3.

22. The disappearance of the appellant further provides a link in the chain of events leading to the only and inescapable conclusion that he, in order to satisfy his lust, took advantage of the young age of the deceased while she was sleeping, subjected her to his carnal pleasures which the deceased could not withstand and died. There could not be a more clear case of a person having killed a 5½ year old girl after committing rape on her.

23. The findings of the doctor, who conducted post-mortem on the deceased, regarding the hymen having been ruptured is also an indicator that the deceased was subjected to sexual intercourse. The forensic report states that one undergarment of the appellant was stained with semen.

24. We have examined the evidence against the appellant.



25. Binod Kumar Yadav (P.W. 1), in support of the prosecution case, claims to have gone to the pond where he found the vehicle parked and in the light of torch, the appellant was seen running away from there.

26. Similar statements have been made by all others viz. Prem Kumar Yadav (P.W. 2), Panchratan Yadav (P.W. 3), Mukesh Kumar Yadav (P.W. 4) and Vijay Choudhary (P.W. 6), all of whom have in unison stated that the appellant was found running away from the pond. He could not be apprehended by anyone of the witnesses in the first instance. He was but later arrested by the members of the public shortly after the occurrence and was handed over to the police.

27. There is but no arrest memo of the appellant nor any evidence on record to certify that the appellant was arrested on hot-chase by the members of the public and handed over to the police. The witnesses before the Trial Court did not know the names of the persons who had helped nab the appellant. None of those persons have



been brought on witness-stand to certify his arrest. There may not be any requisite formality of arrest but in all circumstances, the arrest is required to be documented.

28. We further find that the police officer who recorded the fardbeyan namely Manoj Kumar Singh has not been examined during trial. Had he been examined, this confusion would not have arisen as he would have surely stated about handing over of the appellant to the police before being sent to custody.

29. This lapse, but, does not make the prosecution case liable to be thrown away as there are other materials and evidence against the appellant which completes the chain that except for the appellant, nobody else would have had committed the offence.

30. Prem Kumar Yadav (P.W. 2) had not gone inside the courtyard of Panchratan Yadav (P.W. 3). He remained outside, shuttling between the place where the *Barat* had been put up and the house of Panchratan Yadav (P.W. 3). He saw that the vehicle was taken towards to the



direction of the pond. Initially, he did not suspect anything but when questioned by P.W. 1 about the vehicle, he immediately told him that he had seen the vehicle being taken towards the direction of the pond. On this information, all the witnesses rushed to the pond and saw that the deceased had died and her dead body was thrown near the pond. The vehicle also was found parked.

31. All the witnesses referred to above have also testified the fact that the appellant had tried to escape but ultimately was nabbed shortly after he was seen running away.

32. There are some divergent statement of the witnesses with respect to the presence of blood inside the vehicle; the trail of blood from the vehicle to the pond and near the pond, but in our estimation, those do not render the prosecution story doubtful.

33. We have carefully examined the deposition of the doctor viz. Nawal Kishore Prasad (P.W. 7), who was one of the doctors in the Medical Board constituted for the



purpose of holding postmortem examination, perhaps because the deceased was only a 5½ years old girl.

34. The post-mortem report clearly states that rigor mortis was present on all the limbs. There were blood stains near the genitalia and around the vaginal orifice. No external injury or wound was found on the body. The hymen was found to be torn and the vaginal wall was lacerated. A Bruise also was found at the angle of right eye which was ½ X ½ inches in dimension. No external injury however was found over the neck. The trachea, thyroid cartilage and the clavicle were found to be intact.

35. With these set of findings, one can be very sure that the deceased was not strangled to death but that she could not withstand the act of rape on her. The presence of blood in and around genitalia and the vaginal orifice makes this prosecution very very obvious. Such injury could not have been caused if the deceased were killed in any other way except as alleged.



36. The Medical Board could not assess the cause of death and needed the report of the viscera for giving a final opinion. There is no viscera report available on record. However, the FSL report with respect to blue under-garment, marked (C), belonging to the appellant was found to contain semen. No semen or blood stains were but found on the under-garment of the deceased.

37. The learned counsel for the State has an explanation for the same. The deceased was first undressed and then subjected to sexual intercourse. Under that situation, there would be no possibility of any semen or the blood stains on the undergarment of the victim. These are but isolated pieces of evidence but if collated together, makes out an open and shut case against the appellant.

38. Before listing the reasons why we say so, it would be necessary to refer to the deposition of P.Ws. 8 and 9, the two investigating officers of the case.



39. Arvind Paswan (P.W. 8) has proved the written report in the handwriting of Manoj Kumar Singh (Ext. 2/1) as also the signature of other persons on the FIR. After the recording of the FIR, he had taken up the investigation and had prepared the inquest report (Ext. 7). He had also made the seizure list of the vehicle in which the deceased was left in the company of the appellant (Ext. 8). He had discovered the under-garment of the deceased on the pointing of the appellant. The aforementioned seizure list has been exhibited as Ext. 9. He had sent the under-garment of the deceased, on the permission granted by the Chief Judicial Magistrate, to the Forensic Science Laboratory on 13.06.2013. It was thereafter that he was transferred and he therefore handed over the investigation to Manoj Kumar Singh, who at that time was the officer in-charge of the police station. Before him, the appellant was produced, who had been arrested by the members of the public.



40. Mr. Mishra, however, contends that P.W. 8 has completely denied of having seized the under-garment of the appellant. He says so because P.W. 8 has made a disclosure before the Trial Court that he had not mentioned in the case diary whether such seizure was made by him. He further points out that there was no evidence around the place, where the dead body was found, of any trampling of grass suggesting any scuffle. Satyendra Prasad (P.W. 9) was handed over the investigation later, who had submitted the chargesheet against the appellant.

41. Mr. Mishra, therefore, has contended that effort was made by the investigator to anyhow forge the chain of circumstances to bring it full circle against the appellant.

42. The efforts, he has argued, is obvious when the under-garment of the appellant was later sent by P.W. 9 to the FSL without even knowing what had been put in the sealed envelope which was handed over to him.



43. In this view of the matter, the FSL report regarding presence of semen in the under-garment of the appellant loses all significance.

44. There is some force in the submission of the learned counsel for the appellant but if the other circumstances are seen, it would be difficult to come out with any other hypothesis except of the guilt of the appellant in this case.

45. We say so for the following reasons :-

(I) The vehicle in question was driven by the appellant.

(II) The deceased had fallen asleep and therefore she was left behind in the vehicle under the charge of the appellant.

(III) After sometime, the vehicle was not to be found in front of the house of Panchratan Yadav (P.W. 3).

(IV) The vehicle was found to have been taken towards the direction of a pond.



(V) The vehicle ultimately was found parked near the pond where the dead body also was found thrown.

(VI) The deceased had no undergarment on her body when she was seen by the witnesses.

(VII) The undergarments were found thrown at some distance.

(VIII) The appellant was found running away from the pond.

(IX) No explanation has been offered regarding his absence from the place where he had parked the vehicle at the first instance in his statement under Section 313 of Cr.P.C. and;

(X) There being suspicion against none who could have committed this offence.

46. These circumstances, if put together, clearly make out a case that the appellant took advantage of the helplessness of the deceased and committed the offence.

47. We, therefore, do not find any reason to interfere with the conviction of the appellant for the



offences under Sections 376 and 302 as also 201 of the Indian Penal Code.

48. However, we find that the trial Court has exceeded his jurisdiction in sentencing the appellant for the remainder of his life. Perhaps such a sentence has been awarded, looking at the gravity of the offence and the young age of the victim.

49. The Supreme Court in ***Union of India vs. V. Sriharan @ Murugan and others (2016) 7 SCC 1*** has held that it is within the prescribed limits of punishment of life imprisonment. Having regard to the nature of offence committed, imposition the life imprisonment for a specified period would be proportionate to the crime as well as the interest of the victim, whose interest is also to be taken care of by the court while considering the nature of punishment to be imposed. The power is derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences. But it could be exercised by the High



Court and in the event of further appeal, by the Supreme Court and not by any other court of the country.

(emphasis supplied)

50. It would be profitable to state that in ***Bachan Singh vs. State of Punjab, (1980) 2 SCC 684***, the Supreme Court had upheld the imposition of capital sentence subject to the caveat that it should be invoked in rarest of the rare cases. In the later judgments, a jurisprudence was evolved towards capital sentencing requiring a balance-sheet of aggravating and mitigating circumstances to be drawn and the mitigating circumstances to be accorded full weightage.

51. A Just balance was required to be struck between the aggravating and the mitigating circumstances before the option was exercised. [*Refer to Machhi Singh vs. State of Punjab, (1983) 3 SCC 470*].

52. Later, the Supreme Court in ***Santosh Kumar Satishbhushan Bariyar vs. State of Maharashtra, (2009) 6 SCC 498*** enunciated a two-step process to



decide whether a convict deserved the death sentence *viz.* that the case belongs to the rarest of the rare category and that the option of life imprisonment would simply not suffice. Sometimes later, in ***Swami Shraddhananda (2) vs. State of Karnataka, (2008) 13 SCC 767***, the Supreme Court had an occasion to decide about the appropriate sentence in the event of division of opinion amongst the Judges regarding imposition of capital sentence.

53. While deciding ***Shraddhananda***, the Supreme Court considered the earlier Constitution Bench Judgments in ***Gopal Vinayak Godse vs. State of Maharashtra, (1961) 3 SCR 440, Dalbir Singh vs. State of Punjab, (1979) 3 SCC 745, Subhash Chander vs. Krishan Lal, (2001) 4 SCC 458, Shri Bhagwan vs. State of Rajasthan, (2001) 6 SCC 296, State of M.P. vs. Ratan Singh, (1976) 3 SCC 470*** and several other cases and came to the conclusion that looking at the unsound way in which remissions are generally allowed in



cases of life imprisonment, a very strong case is made out for carving a special category of few cases where the death penalty might be substituted by punishment of imprisonment of life or imprisonment for a term in excess of 14 years and to put that category beyond the application of remission.

54. The Supreme Court found that a far more just, reasonable and proper course in such cases would be to expand the option of sentencing and impose sentence for a fixed period or for the remainder of the life of the convict without remissions. It was however clarified, we repeat that such fixed term of imprisonment could be awarded only by the High Court or the Supreme Court but not by any other inferior court.

55. Many a times, the courts other than the High Courts awarded such sentence of fixed terms which led to a referral to Constitution Bench in ***V. Sriharan @ Murugan (supra)***.



56. The concept of imprisonment for a fixed term as developed in ***Shraddananda*** (*supra*) was affirmed but the power to do so as noted above was held to be only with the High Court and the Supreme Court.

57. Thus, the Trial Courts are completely foreclosed from imposing such a modified or specific term sentence or life imprisonment for the remainder of the convict's life as an alternative to death penalty.

58. The Trial Court in this instance has thus sentenced the appellant wrongly.

59. We also find that certain other important factors like the age of the appellant, the probability of his not committing criminal act of violence as constituting a continuous threat to society, the probability that he could be reformed and rehabilitated or that he behaved himself during ten years of imprisonment, were not taken into account before embarking on sentencing.

60. This compels us therefore, to interfere with the sentence imposed upon the appellant by the trial court.



61. We modify the same to be life imprisonment (with all remission to which the appellant is entitled) with fine of Rs. 5,000/- for the offence under 302 IPC, ten years rigorous imprisonment for the offence under 376 IPC along with a fine of Rs. 5,000/- and five years rigorous imprisonment for the offence under 201 IPC.

62. The appeal is dismissed but with a modification in the sentence imposed upon the appellant as noted above.

63. The sentences, however, shall run concurrently.

(Ashutosh Kumar, J)

(Shailendra Singh, J)

krishna/-

AFR/NAFR	AFR
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