

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.681 of 2018

Arising Out of PS. Case No.-12 Year-2016 Thana- NOWKOTHI GARHPURA District-
Begusarai

=====

Parwati Devi @ Paro Devi W/o Rameshwar Mahto resident of Village- Pir
Nagar, P.S. Naokothi, District- Begusarai.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 688 of 2018

Arising Out of PS. Case No.-12 Year-2016 Thana- NOWKOTHI GARHPURA District-
Begusarai

=====

Prince Kumar Mahto @ Prince Kumar S/o Rameshwar Mahto, R/o Vill. Pir
Nagar, P.S.- Naokothi, District- Begusarai.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 690 of 2018

Arising Out of PS. Case No.-12 Year-2016 Thana- NOWKOTHI GARHPURA District-
Begusarai

=====

Rameshwar Mahto S/o Late Shibu Mahto, resident of Village- Pir Nagar, P.S.
Naokothi, District- Begusarai.

... .. Appellant/s

Versus



The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 681 of 2018)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Rajkumar Rajesh, Advocate

For the State : Smt. Usha Kumari No-1, APP

For the informant : Mr. Jai Prakash Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 688 of 2018)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Pushpendra Kumar Singh, Advocate

For the State : Mr. Sadanand Paswan, APP

For the informant : Mr. Jai Prakash Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 690 of 2018)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Kiran Kumari, Advocate
Mr. Md. Imteyaz Ahmad, Advocate
Mr. Ritwik Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate

For the State : Mr. Sadanand Paswan, APP

For the informant : Mr. Jai Prakash Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 11-10-2023

The present appeals have been filed by the concerned appellants-convicts under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as the 'Code') against impugned judgment of conviction dated 06.04.2018 and order of sentence dated 09.04.2018 passed by learned Special Judge S.C./S.T. (POA) Act, Begusarai in connection with Naokothi P.S. Case No. 12 of 2016, whereby the concerned Trial Court has convicted the present appellants for the offences punishable under



Sections 302/34, 120B of the I.P.C., under Section 27 of the Arms Act and under Section 3(2)(v) of S.C./S.T. Prevention of Atrocities Act.

2. The factual matrix of the present case is as under:-

"On 27.02.2016, at about 09:00 a.m. in the morning, Swati Kumari @ Krishna Kumari aged about 27 years, daughter of the informant Harilal Paswan (a teacher in an upgraded Middle School, Pir Nagar, Gamaharia) went to the school at 09:00 a.m. on 27.02.2016. The same day, at about 01:30 p.m., Swati Kumari was coming back to her home from the school. She was shot dead by the unknown miscreants who were boarded on a motorcycle in front of the house of Rampravesh Paswan. It is said that on hulla, the informant reached at the place of incident and found her daughter lying dead on the road with firearm injuries on her right ear, left jaw, left hand and on her rib cage. He asked the people of the locality regarding the occurrence but could not get any information regarding the unknown miscreants. It is further stated that Prince Kumar Mahto had kidnapped his daughter in the year 2012 for which Naokothi P.S. Case No. 30 of 2012 dated 15.05.2012 under Section 363, 366, 342, 323, 376/34 of the I.P.C. and S.C./S.T. Act was registered and in connection with the aforesaid case, Prince Kumar is in custody at Begusarai jail. It is also stated that earlier his daughter Swati Kumari was threatened by Prince Kumar Mahto not to depose in the Court, but ignoring the threat, his daughter had deposed in the Court and a few months ago, Prince Kumar Mahto was convicted and was sentenced for life by the concerned Court. The informant has claimed that Prince Kumar Mahto, who is in jail custody, has conspired and committed the murder of his daughter with the help of his unknown companion miscreants."



3. On the basis of the aforesaid *fardbeyan* given by Harilal Paswan, formal F.I.R. came to be registered as Naokothi P.S. Case No.12 of 2016 for the offences under Sections 302/34, 120B of the I.P.C., under Section 27 of the Arms Act and under Section 3(2)(v) of the S.C./S/T. Act. The Investigating Officer carried out the investigation, and during the course of investigation, the Investigating Officer had recorded the statement of the witnesses, collected the documentary evidence and thereafter, filed the charge-sheet against the appellants and two other accused. The learned Magistrate committed the case to the concerned Sessions Court under Section 209 of the Code as the case was exclusively triable by the Court of Sessions.

3.1 Before the Sessions Court, the case was registered as Naokothi P.S. Case No. 12 of 2016. Before the Trial Court, the prosecution had examined six witnesses and also produced the documentary evidence. Thereafter, statement of the accused under Section 313 of the Code came to be recorded and after conclusion of the evidence, the Trial Court passed the impugned judgment and order by which the Trial Court convicted the present appellants, as observed hereinabove, whereas two other accused namely, Chandrashekhar Paswan @ Karnal Paswan and Shatruhan Paswan have been acquitted by the Trial Court. Against the said order of



conviction, the three convicts have filed three separate appeals, as observed hereinabove.

4. Heard Learned Advocate Mr. Ajay Kumar Thakur assisted by Mr. Rajkumar Rajesh, Mr. Pushpendra Kumar Singh, Mrs. Kiran Kumari and Mrs. Vaishnavi Singh for the appellants, Mr. Jai Prakash Singh for the informant and Smt. Usha Kumari No.1 and Mr. Sadanand Paswan, learned A.P.P's. for the Respondent-State.

5. Learned Advocate Mr. Ajay Kumar Thakur for the appellants would mainly submit that the present case is of circumstantial evidence, and there is no eye-witness to the occurrence in question. It is further submitted that the prosecution has not completed the chain of circumstances from which it can be conclusively proved that the present appellants and appellants only have committed the alleged offence. It is further submitted that the appellant Rameshwar Mahto and Paro Devi @ Parwati Devi are parents of the accused Prince Kumar Mahto. It is submitted that Prince Kumar Mahto was in custody when the occurrence in question had taken place. He has been implicated only on the ground that the deceased filed case against him for the offence punishable under Section 376 of the I.P.C. in which the said accused has been convicted by the Trial Court, as a result of



which, keeping grudge of the same, he has committed the present offence. It is further submitted that there is no material available with the Trial Court that the present appellants have hatched conspiracy and thereafter, killed the deceased Swati Kumari, as alleged by the prosecution. It is also submitted that Trial Court has mainly placed reliance upon the C.D.R's collected by the Investigating Officer with regard to the mobile phones of the appellants/convicts and the deceased Swati Kumari. At this stage, it is further submitted that the prosecution did not examine the service provider with a view to prove that the said C.D.R. was provided by the concerned mobile company to the Investigating Officer and, in fact, Investigating Officer himself has issued certificate under Section 65(B) of the Evidence Act by stating that he is authorized to issue such certificate. However, the prosecution has not produced any material to point out as to who had given the said authorization to the Investigating Officer to issue such certificate. Thus, it is submitted that even the said C.D.R's are also not duly proved, though produced by the Investigating Officer before the Trial Court. In spite of that, the Trial Court has mainly placed reliance upon the said document.

6. Learned counsel for the appellants would thereafter submit that even assuming that from the C.D.R's, collected by the



Investigating Officer, it is established that accused Prince Kumar Mahto called his parents from his mobile number on the date of occurrence and prior to that, the said accused Prince Kumar Mahto also called the deceased Swati Kumari on her mobile phone. Even then, from the said fact only it cannot be proved beyond reasonable doubt that from the jail, accused Prince Kumar Mahto asked his parents to kill Swati Kumari, and in the morning of the date of occurrence, the accused Prince Kumar Mahto threatened Swati Kumari. There is no such evidence on record produced by the prosecution. Thus, the Trial Court has passed an order of conviction only on the basis of presumption. It is submitted that though it is alleged by the prosecution that the location of the mobile phones of the appellant Rameshwar Mahto and Parwati Devi were found at the place of occurrence, it is revealed from the deposition of the Investigating Officer that both the said appellants are residing in the same area near the place of occurrence and, therefore, naturally tower location of their mobile phones would be the residence of the said appellants. Learned counsel, therefore, urged that impugned order be quashed and set aside.

7. Learned counsel further submitted that even the F.I.R. was registered against the deceased Swati Kumari and her brother for the offences punishable under Section 302, 120B/34 of I.P.C.



The said case was pending before the concerned Trial Court. Therefore, the deceased was having criminal history and, therefore, there are chances that some other persons might have killed her.

8. Learned counsel Mr. Ajay Kumar Thakur further submits that the Trial Court has acquitted two other accused namely, Shatruhan Paswan and Chandrasekhar Paswan against whom it is alleged that the appellant Rameshwar Mahto with the help of other two persons killed the deceased, and it is the case of the prosecution in the form of deposition of PW-3 Shyama Devi that she had seen the appellant Rameshwar Mahto, Parwati Devi running from the place of occurrence, whereas, she has also seen Chandrasekhar Paswan fleeing away from the said place with a pistol. Thus, when the Trial Court has not believed the story of the said witness while acquitting Chandrasekhar Paswan, there was no reason for the Trial Court to believe the other part of the story of the said witness. It is also submitted that against the order of acquittal passed in favour of the two other accused, the informant and/or State has not preferred any acquittal appeal. Learned counsel, therefore, urged that all the present appeals be allowed and thereby the impugned order be quashed and set aside.



9. On the other hand, learned A.P.P Mr. Jai Prakash Singh appearing for the informant has referred the depositions of the prosecution witnesses and thereafter submitted that the accused Prince Kumar Mahto committed rape upon the deceased Swati Kumari and, therefore, deceased Swati Kumari filed F.I.R. against him. The present appellants were given threats that she should not give deposition during the course of the trial of the said case. Therefore, the F.I.R. with regard to the said incident was also filed against the appellant Rameshwar Mahto and Parwati Devi in the year 2014. Learned counsel has referred the observations made by the Trial Court with regard to the said F.I.R. in the impugned judgement. It is further submitted that despite the threats given by the concerned appellants, Swati Kumari gave her deposition in the Court, as a result of which, Prince Kumar Mahto came to be convicted for commission of the offence punishable under Section 376 of the I.P.C. and he was sent to the jail. Thus, the prosecution has proved the motive on the part of the accused to commit the present offence.

10. Learned counsel would further submit that PW-3 Shyama Devi is though not an eye-witness to the occurrence, she has specifically stated in her examination-in-chief that she reached the place of occurrence after hearing the sound of firing. She had



seen Parvati Devi and Rameshwar Mahto fleeing from the said place and Chandrasekhar Paswan was also with them and Chandrasekhar Paswan was carrying a pistol. Learned counsel, therefore, submitted that on the basis of the said evidence, the Trial Court has rightly passed an order of conviction against the appellants herein.

11. It is further submitted that the Investigating Officer had seized the mobile phones of the deceased as well as the appellants Parwati Devi and Rameshwar Mahto and C.D.R. of mobile phones of the aforesaid three persons as well as the mobile phone of Prince Kumar Mahto, who was in custody, were obtained by the Officer. The said Officer has produced the C.D.R. of the said mobile phones before the Trial Court and the same is exhibited. Learned counsel submitted that from the C.D.R's collected by the Investigating Agency, it is revealed that in the morning on the date of occurrence at about 07:12 a.m. Prince Kumar Mahto, who was in custody, dialed from his mobile phone on the mobile phone of the deceased Swati Kumari and gave threats. Thereafter, during 09:46 a.m. to 13:45 hrs. (01:45 p.m.), Prince Kumar Mahto had talked thirteen times with his father and also talked with his mother Parwati Devi between 09:41 a.m. to 13:42 hrs. six times. It is also submitted that the tower location of



the appellants Rameshwar Mahto and Parwati Devi is the place of occurrence, whereas the location of mobile phone of Prince Kumar Mahto is the area in which he was kept in custody. Thus, it is submitted that the prosecution has proved the case against the appellants/convicts beyond reasonable doubt. However, learned counsel has fairly submitted that this is the case of circumstantial evidence and there is no eye-witness to the occurrence in question.

12. Learned counsel for the informant has also fairly submitted that against the order of acquittal passed by the Trial Court against the two other accused, no appeal has been filed by the informant or the State.

13. Learned A.P.P. has also opposed the appeals and adopted the submissions canvassed by the learned counsel for the informant. Both the learned counsels, therefore, urged that all the three appeals be dismissed as the prosecution has proved the case against the accused beyond reasonable doubt.

14. Having heard the learned counsel appearing for the parties and having gone through the entire evidence led by the prosecution before the Trial Court, it would emerge that, admittedly, there is no eye-witness to the occurrence in question and the case of the prosecution rests on the circumstantial evidence. It is not in dispute that the informant Harilal Paswan,



who was the father of the deceased Swati Kumari, has not been examined by the prosecution as the said informant died during the pendency of the appeal because of his illness. If the *fardbeyan* given by the informant Harilal Paswan is carefully seen, it is his specific case that on 27.02.2016 at 01:30 p.m. when his daughter Swati Kumari was returning from the school near the house of Rampravesh Paswan, unknown persons came on the motorcycle and opened fire from the pistols which they were carrying. On hearing *hulla*, the informant immediately reached the place of occurrence, and at that time, he saw that his daughter Swati Kumari succumbed to the injuries and died. She had sustained injuries on various parts of the body. He, therefore, tried to collect information from the persons who were gathered near the place of occurrence. However, no information was received from the persons who were present with regard to the assailants. However, the said informant has further raised doubt/suspicion that Prince Kumar Mahto in connivance with his parents hatched the conspiracy with a view to kill his daughter. The said informant has also attributed motive by stating that Prince Mahto has been convicted for the offence punishable under Sections 363, 366, 342, 323, 384, 386, 376/34 of I.P.C and S.C./S.T. Act. In the F.I.R. filed by the deceased Swati Kumari, threats were given during the



pendency of the said trial that Swati Kumari should not give deposition against the said accused. Despite that, she gave her deposition before the Court and, therefore, the said accused has been convicted and sentenced to suffer rigorous imprisonment for life.

15. It further transpires from the record that PW-1 Pramod Kumar was examined by the prosecution as a witness to the Seizure List. The bullet was found at the place of occurrence which was seized by the Investigating Agency and the said witness has signed the Seizure List. However, during cross-examination the said witness has stated that the bullet was not recovered in his presence. A number of persons gathered at the place and *darogaji* asked him to sign the Seizure List.

16. PW-2 Kailash Paswan is the brother of the deceased Swati Kumari. The said witness in examination-in-chief stated that the occurrence took place on 27.02.2016 at 01:16 p.m. At that time, he was present in his house. He heard the sound of firing, therefore, he rushed towards the school. When he reached at the place of occurrence, he found his sister dead with bullet injuries on various parts of her body. Due to fear, nobody had informed at the time of occurrence. Thereafter, he came to know that on the basis of the direction given by Prince Kumar Mahto, who was in jail,



Rameshwar Mahto, Shatrudhan Paswan, Karnal Paswan and Paro Devi have killed his sister. The said witness has also stated about the case of rape registered by his sister against Prince Kumar Mahto in which Prince Kumar Mahto has been sentenced to suffer R.I. for life. He also stated that Prince Kumar Mahto gave threats from his mobile phone on various occasions. The said witness also signed on the Inquest Report prepared by the Investigating Officer and also signed the Seizure List.

16.1 During cross-examination, PW-2 stated that he reached the spot/place of occurrence after three minutes and he is not an eye-witness to the occurrence and is giving the deposition on the basis of information gathered by him.

17. PW-3 Shyama Devi is the maternal aunt of the deceased and sister-in-law of the informant. The said witness has stated in her examination-in-chief that at the time of occurrence, she was in the house of father of Swati Kumari (house of the informant). She heard the sound of firing and rushed to the place of occurrence. At that time, she had seen that her sister's daughter was lying in the ditch and Parvati Devi and Rameshwar Mahto were fleeing from the said place with Chandrasekhar Paswan who was carrying a pistol. She further stated that Swati Kumari sent Prince Mahto to jail. However, the said witness had identified only



Parwati Devi who was present in the Court. She had identified Prince Kumar as Shatrudhan and Chandrasekhar as Prince. She could not identify any other accused.

17.1 During cross-examination, the said witness has stated that she had stated before the Police while giving her statement that she saw dead body and when enquired, villagers informed her that assailants came on motorcycle and opened fire on Swati Kumari, as a result of which, she died. She had also given statement before the Police that the persons who had gathered at the place of occurrence did not inform about the name of the assailants. She had further admitted that when she reached near the dead body of Swati Kumari, she did not find any of the accused at the said place. She had also stated that Swati Kumari was an easy virtue and a case was also registered against her. She has also admitted that she is not an eye-witness to the occurrence.

18. PW-4 Doctor Raju had conducted the *post mortem* of the deceased. The said witness found following injuries:-

Rigor Mortis- Absent Both of Upper and Lower limb.

External Injuries-

Dark blood and Blood cloth present on face and other part of body.

Injuries-

(1) Lacerated Wound – one and half inch X one inch on right ear margin inverted with charring and tattooing (entry wound)



(2) Lacerated Wound on left side neck behind left mandible margin everted (exit wound)

(3) Lacerated Wound – 3X2 inch on lateral side of left arm. Margin inverted (entry wound)

(4) Lacerated Wound – 4X3 inch on lateral side of left arm. Margin everted (exit wound)

(5) four and half inch X three and half inch deep to chest cavity in left side chest. Margine everted (entry wound)

(6) Six X five inch deep to Chest chemical on right side. Margin everted (exit wound)

(7) Lacerated wound – half inch X half inch deep to abdominal cavity on right lumber region. Margin inverted (entry wound)

(8) One inch X one inch deep to abdominal cavity wound left side umblicus. Margin everted (exit wound)

Dissection – Dark blood in base of cranial cavity, abdominal cavity, multiple perforation on small intestine. Uterus – small and non gravid. Stomach contained semi-digested food.

Cause of death – Haemorrhage and shock due to above injuries caused by fire arm.

Time since death – within eight hours.

19. PW-5 Brajesh Kumar Singh is the Investigating Officer who had carried out the Investigation. The said Officer has recorded the statement of the witnesses and collected the documentary evidence in the form of C.D.R. of the mobile phones of the deceased and all the three appellants. The said witness has also seized one bullet and empty cartridges from the place of occurrence. The said Officer also seized the mobile phone of the deceased, accused Rameshwar Mahto and Parwati Devi. The said



witness also collected the information in the form of the C.D.R. of the said mobiles and stated that on the date of occurrence at 07:12 a.m., accused Prince Kumar Mahto made phone call to deceased Swati Kumari and the tower location of the said mobile at the relevant point of time was Pokharia Kali Asthan, the place near the jail in which the said accused was kept. The said witness further stated that on the very same day, between 09:46 a.m. to 13:45 hrs. (01:45 p.m.) accused Prince Kumar Mahto made phone calls from his mobile to the mobile phone of the accused Rameshwar Mahto i.e. his father and also made phone calls six times between the said period to his mother i.e. the accused Parwati Devi. The tower location of the mobile phone of accused Parwati Devi and Rameshwar Mahto is the place of occurrence.

19.1 During the cross-examination, the said witness has stated that the tower location of mobile phone of Rameshwar Mahto and Parwati Devi, as per C.D.R., is Pirnager. He has also admitted that the house of Rameshwar Mahto and Parwati Devi is in Pirnager. He has further admitted that he had no knowledge with regard to the phone calls made by the accused Prince Kumar Mahto to his father. He did not obtain any material that the accused Prince Kumar Mahto was talking everyday to his parents on mobile phone.



20. PW-6 Pawan Kumar Singh is the S.I. of Police, who was working as System Officer at the Information Branch at Begusarai District and on the order of Superintendent of Police, he had collected the CDR and CAF of the relevant mobile numbers of the accused as well as the deceased and copy of the CDR and CAF was obtained from the computer. 30 pages CDR/SDR and CAF was collected by him and the said Officer had produced the copy of the same before the Court which was exhibited.

20.1 During cross-examination, the said witness has stated that except the informant Heeralal Paswan, he had not obtained CAF of accused from customer application. In the SDR of Prince Kumar Mahto, there is no name of his father. The said Officer further stated that he has been duly authorized by the Police Department to issue certificate.

21. We have considered the submissions canvassed by the learned counsel appearing for the parties. We have also perused the entire evidence produced by the prosecution before the Trial Court. It would emerge from the record that the informant Harilal Paswan gave his *fardbeyan*, pursuant to which a formal F.I.R. came to be registered. From the *fardbeyan* it is revealed that the informant, who was the father of the deceased, reached at the place



of occurrence immediately after hearing the sound of firing. When he reached the place of occurrence, he inquired from the people gathered there from which he came to know that his daughter Swati Kumari was shot dead by unknown miscreants who were boarded on motorcycle. Though the informant is not the eye-witness to the occurrence in question, no doubt, in the *fardbeyan*, the said witness has attributed motive on the part of the appellants/accused for commission of the alleged offences. However, the informant died during the pendency of the trial and, therefore, his deposition before the Court was not recorded. It is further revealed from the record that, admittedly, there is no eye-witness to the occurrence in question and the case of the prosecution rests on circumstantial evidence. The prosecution has mainly placed reliance upon the deposition given by PW-3 Shyama Devi by contending that the said witness reached the place of occurrence immediately after hearing the sound of firing and at that time, she had seen that her sister's daughter was lying in the ditch and Parwati Devi and Rameshwar Mahto were fleeing from the said place with one Chandrashekhar Paswan who was carrying a pistol. However, it is not in dispute that the said witness had identified only Parwati Devi who was present in the Court and she had identified Prince Kumar as Shatruhan and Chandrashekhar as



Prince and she could not identify any other accused. Further, the said witness has specifically admitted during cross-examination that she had stated before the Police, when her statement was recorded, that she saw dead body and, when inquired, villagers informed her that the assailants came on motorcycle and opened fire on Swati Kumari, as a result of which she died. She had further stated in her statement given before the Police that the persons who had gathered at the place of occurrence did not inform about the names of the assailants. She had also admitted that when she reached near the dead body of Swati Kumari, she did not find any of the accused at the said place. Thus, we are of the view that the reliance placed by the prosecution on the deposition of PW-3 is misconceived. The said witness, for the first time, has stated before the Court that she had seen three persons fleeing away from the spot. Thus, there is an improvement in the deposition given by the said witness.

21.1. At this stage, it is also pertinent to note that the Trial Court has believed the story of PW-3 *qua* the accused Parwati Devi and Rameshwar Mahto and not *qua* Chandrashekhar Paswan. It is revealed that Chandrashekhar Paswan has been acquitted by the Trial Court along with another accused Shatruhan



Paswan. Surprisingly, on the same evidence of PW-3, the aforesaid two accused have been convicted.

21.2. Even otherwise, it is relevant to observe at this stage that as per the *fardbeyan* given by the father of the deceased, he reached at the place of occurrence immediately after hearing sound of firing and, when inquired, the persons gathered there informed that unknown assailants came on motorcycle who killed the deceased whereas, even as per the case of PW-3 Shyama Devi who was also residing in the same house in which the informant was residing, as she is sister-in-law of the informant, she immediately rushed to the place of occurrence and she had seen the present two appellants and one Chandrashekhar Paswan fleeing away from the place of occurrence. If that is the case of PW-3 then, 'why she had not informed the informant that she had seen three persons fleeing away from the spot?' Therefore also, the deposition given by PW-3 is required to be discarded.

22. Learned counsel appearing for the informant as well as the learned A.P.P. have heavily placed reliance upon the deposition of the Investigating Officer, PW-5. It is submitted that the said witness had collected documentary evidence in the form of CDR of the mobile phones of the deceased and the appellants and the said witness has also seized mobile phones of accused



Parwati Devi and Rameshwar Mahto as well as of the deceased Swati Kumari. It is contended that the accused Prince Mahto made phone calls to his father and mother on the date of the occurrence on various occasions. It is further submitted that the accused Prince Mahto also made phone call to the deceased at 07:13 a.m. in the morning and gave threats. However, it is relevant to note that merely because phone call was made to the deceased, it cannot be presumed that the threat was given to her on her mobile phone. The deceased had not informed any authority with regard to the so called threats given by accused Prince Mahto from jail. It was also contended that the tower location of the mobile phone of accused Parwati Devi and Rameshwar Mahto is Pirnager, i.e. the place of occurrence. However, it is also not in dispute that the said two appellants/convicts are residing in the same area, i.e. in Pirnager. The said aspect has been admitted by Investigating Officer during his cross-examination. Thus, when the said appellants/convicts are residents of Pirnager, then naturally their tower location would be of the same area and only on that basis it cannot be presumed that the said appellants have killed the deceased by hatching conspiracy with accused Prince Mahto.

23. Even the CDR and CAF of the relevant mobile numbers was collected by PW-6 who was working as System



Officer at the Information Branch in the concerned District. The said Officer had not produced the order of Superintendent of Police by which he was directed to take out the said CDR from the computer. The said Officer has issued the certificate under Section 65(B) of the Evidence Act by stating that he is authorized to issue such certificate. However, such authority letter was not produced by him. It is also not in dispute that service providers of the concerned mobile company have not been examined by the prosecution.

24. Even assuming that accused Prince Mahto had made phone calls to his parents on the date of occurrence on various occasions, even then, only on that basis, it cannot be presumed that all the three accused hatched the conspiracy and the appellants Parwati Devi and Rameshwar Mahto have killed the deceased by firing.

24.1. It is also relevant to note that pistol/revolver from which firing took place has also not been recovered/discovered and, therefore, merely by attributing some motive to the accused, it cannot be presumed that the appellants/convicts only have committed the alleged offences.

25. At this stage, it is also pertinent to observe that the deceased and her brother, i.e. PW-2, were also accused of the



F.I.R. registered under Section 302 of I.P.C. against them. Therefore, it was a specific defence of the accused that as the deceased was having criminal history, there are chances that some other persons might have killed her. The defence has, therefore, produced copy of the F.I.R. which was registered against the deceased and her brother which is exhibited as Exhibit-B.

26. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to complete the chain of circumstances from which it can be said that the appellant/convicts only have committed the alleged offences and none else. Thus, the prosecution has failed to prove the case against the appellants/convicts beyond reasonable doubt and, therefore, the Trial Court has committed grave error while passing the order of conviction against the present appellants. The impugned order is, therefore, required to be quashed and set aside.

27. Accordingly, the impugned judgment of conviction dated 06.04.2018 and order of sentence dated 09.04.2018 passed by learned Special Judge S.C./S.T. (POA) Act, Begusarai in connection with Naokothi P.S. Case No. 12 of 2016 is quashed and set aside. The appellants, namely, Parwati Devi @ Paro Devi, Prince Kumar Mahto @ Prince Kumar and Rameshwar Mahto are acquitted of the charges levelled against them by the learned Trial



Court. They are directed to be released forthwith, if their presence is not required in any other case.

28. The appeal is, accordingly, allowed.

(Vipul M. Pancholi, J)

(Chandra Shekhar Jha, J)

Sachin/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	18.10.2023
Transmission Date	18.10.2023

