

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.19 of 2015

Arising Out of PS. Case No.-65 Year-2012 Thana- BEERPUR District- Begusarai

Shankar Singh Son of Late Dineshwar Singh Resident of Village Akbarpur
Purani Dih, Police Station - Samho, District - Begusarai, Presently residing at
Lekho Singh Bhawan, Tilrath, Police Station Barauni, District - Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 114 of 2016

Arising Out of PS. Case No.-65 Year-2012 Thana- BEERPUR District- Begusarai

Mangal Rai Son of Late Badlu Rai resident of Village - Genharpur Gend-
harpur, Police Station - Birpur, District - Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 19 of 2015)

For the Appellant/s : Mr. Choudhary Shyam Nandan, Adv.
Mr. Krishna Kumar Yadav, Adv.

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 114 of 2016)

For the Appellant/s : Mr. Choudhary Shyam Nandan, Adv.
Mr. Krishna Kumar Yadav, Adv.

For the Respondent/s : Ms. Shashi Bala Verma, 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

We have heard Mr. Chaudhary Shayam Nandan

assisted by Mr. Krishna Kumar Yadav, learned advocates



for both the appellants and Ms. Shashi Bala Verma for the
for the State.

2. Both the appeals have been heard together and
are being disposed of by this common judgment.

3. The appellants who are related to each other
have been convicted under Sections 302 & 201 with the
aid of Section 34 of the I.P.C. and have been sentenced
to undergo imprisonment for life, a fine of Rs. 10,000/- for
the offence under Section 302/34 of IPC and rigorous
imprisonment for five years and a fine of Rs. 5,000/- for
the offence under Section 201/34 of IPC by judgment of
conviction and order of sentence dated 27.11.2014 and
04.12.2014 respectively in Sessions Trial No. 24 of 2013
arising out of Birpur P.S. Case No. 65 of 2012. Both the
sentences have been ordered to run concurrently.

4. A lady by the name of Baby Devi was killed by
the appellants. The appellants stand in relation to the
deceased. On 12.07.2012, a local *Chowkidar* namely Ram
Kumar Mahto (P.W.9) learnt that a dead body of a young



female is lying in a water-body in front of the field of one Soman Mahto (P.W.3). On such information, P.W.9 went to the place where the dead body was floating in water and found such information to be correct. The Officer In-charge of the concerned police Station was telephonically informed. Looking at the dead body, P.W.9 assumed that the deceased has been strangled. Nobody was found around to identify the dead body.

5. On such *fardbeyan* of P.W.9, Birpur P.S. Case No. 65 of 2012 was registered for investigation on 07.12.2012 for offences under Section 302, 201 and 34 of I.P.C. against unknown.

6. It appears that later, from the photograph of the dead body, her son, her brother and others identified whereafter they also identified the dead body when it was brought before them. A suspicion was raised on the appellants whereafter they were arrested. Confessions, it has been argued were extracted from both the appellants and both of them were charged for the offences under



Sections 302, 201 and 376 with the aid of Section 34 of the I.P.C to which they pleaded not guilty. However, the Trial court, after examining 14 witnesses on behalf of the prosecution and none on behalf of the defence convicted and sentenced the appellants as aforesaid. The charge under Section 376 of the I.P.C could not be made out and hence both of them were acquitted of such charge.

7. During the trial, Upendra Mahto, Sukhdev Mahto, Soman Mahto and Ramjeet Mahto (P.Ws. 1 to 4) though have claimed to have seen the dead body but did not identify that to be of the deceased. Hence their evidence at the trial is of no help to the prosecution.

8. Madhu Ram @ Dilkhush Ram, who is the son of the deceased, has stated at the trial that he did not find his mother at home on 10.07.2012. He was informed by his father/Ramashis Singh (P.W.13) that she had gone to the house of appellant/Shankar Singh to procure money for his admission in Engineering College. After hearing this, P.W.5 is said to have gone to the house of



appellant/Shankar Singh where he met Shankar Singh, his wife and his mother. On the asking of Shankar Singh, P.W.5 came back home but was on telephonic contact with his mother till 11.07.2012. Thereafter, the mobile telephone of his mother was left unattended. P.W.5 thereafter called Shankar Singh on 12.07.2012 when he was informed by Shankar Singh that his mother has been sent to the place where she had to be sent. Shankar Singh's telephone also remained unattended thereafter. When the mother of P.W.5 did not return home, then he along with his father (P.W.13) visited another house of Shankar Singh in the evening of 12.07.2012 but did not find any person there. Later, P.W.5 came to his maternal grandfather's house. While he along with his father was there at his maternal grandfather's house, the police party from Birpur Police Station came and informed him and others that a dead body of a lady was found in front of the field of one Soman Mahto. P.W.5 was shown the photograph of the dead body and he immediately identified



it to be of his mother. It was there only that the police recorded his statement and the statements of his maternal uncle/Santosh Kumar (P.W.6) and his maternal grandfather Wakil Prasad Singh (not examined). P.W.5 was informed by the Sub-Inspector of Birpur Police Station that on finding the dead body, it was sent to an organization by the name of *Ambedkar Sansthan* after the postmortem examination was done. On such information, P.W.5 and others went to Ambedkar Sansthan where he was informed that the dead body has been kept in a ditch near Begusarai Station. The dead body was later taken out from the ditch and was identified by P.W.5 and others. Thereafter, cremation took place. He learnt on 16.07.2012 through his father that the appellants had been arrested and from their possession, many incriminating articles like mobile telephones, slippers and Sari belonging to the deceased were recovered.

9. Be it noted that appellant/Shankar Singh is the own *Mausa* of P.W.5.



10. During the trial, P.W.5 reiterated that he had been in contact with appellant/Shankar Singh on telephone while her mother was in his company. However, he took a view that the deceased must have been killed by strangulation.

11. P.W.13, who is the husband of the deceased, has supported the prosecution case that the deceased had gone to Shankar Singh for procuring money for admission of P.W.5 in an Engineering College. He has further ratified that P.W.5 had visited Shankar Singh at his house when the deceased was present there who was to come back after money was given to her. When she did not come till 12.07.2012 then P.W.5 talked to Shankar Singh who told him that the deceased had been given Rs. 1,50,000/- and was made to sit in a bus for coming back home but, she had not come home till 12.07.2012. That is why, in the evening of 12.07.2012, he along with his son visited the other house of Shankar and thereafter went to the paternal home of the deceased. In his presence, the Inspector of



Birpur Police Station came and showed him and others a photograph of an unclaimed dead body, which he too identified to be that of his wife. He has further stated that the last rites were performed in village Sihma. He was also made to understand that Shankar Singh had confessed about his having killed the deceased and appropriated the belongings with the help of appellant/Mangal Rai, who is the Brother-in-law of the appellant/Shankar Singh. Shankar Singh is the co-brother of P.W.13.

12. Similar statement has been made by Santosh Kumar (P.W.6) who is the brother of the deceased, Rajesh Kumar (P.W.7) and Govind Kumar (P.W.8) who are the neighbors of Santosh Kumar.

13. The Informant (P.W.9) proved the FIR (Ext. 4) and told the Trial court that the dead body was sent to Begusarai hospital for Postmortem. It was only later that he came to learn that the deceased was Baby Devi of Lakhisarai.



14. In this context, it would be necessary to refer to the deposition of Investigating Officer namely Mintu Kumar Singh who has been examined as P.W.10. At the relevant time, he was posted as Sub-Inspector of Birpur Police Station. He was informed by P.W.9 that a dead body was found thrown in front of the filed of Soman Mahto. On this information, he came to the place and found a semi-naked dead body of a female. The dead body was sent to Sadar Hospital, Begusarai for postmortem after recording the statement of P.W.9 and preparing inquest of the dead body. He has proved the Inquest Report (Ext. 5). Thereafter, he took the statements of other persons and also produced the photograph of the deceased before other the witnesses about which reference has been made in the proceeding paragraphs.

15. During the investigation of the case, P.W.10 asserts that Shankar Singh confessed his guilt and on that basis, a mobile telephone was recovered. Apart from that, certain other incriminating articles like a gold nose-pin, a



towel and another mobile phone was also recovered from his house.

16. Appellant/Mangal Rai had also confessed and from his house also personal belongings of the deceased along with the cash of Rs. 10,000/- was recovered (Ext. E, F, G and H).

17. A general statement was given by P.W.10 that those articles were identified by the family members of the deceased and it was confirmed by them that those articles belonged to the deceased.

18. The postmortem report has been proved by Dr. Akhilseh Kumar (P.W.12) who but did not find any sign of rape. He found the death to be a result of asphyxia as a result of strangulation. The postmortem was conducted at 2:30 Am on 12.07.2012 only.

19. It appears to us that the police proceeded to investigate the appellants on the basis of confession made by them. There was no material before the police till the



confession was extracted which would have given any clue to justify the suspicion against the appellants.

20. The learned counsel for the appellants has submitted that unless the relationship between the deceased and her family and the family of Shankar Singh would not have been very cordial, the deceased would not have gone to Shankar Singh for taking loan of Rs. 1,50,000/- for the admission of her son in Engineering Course.

21. According to the evidence collected during the course of investigation and trial, money was given to the deceased. But the deceased never came back home with that money. It was only a dead body which was found floating in a water in front of field of P.W.3 who did not identify the deceased.

22. After having gone through the entire materials on record, we are at a loss to understand few facts which have been completely ignored by the Trial court.



23. According to the son of the deceased, he was in contact with his mother till 11.07.2012. In the morning of 12.07.2012, Shankar Singh had told him that money was given to the deceased and she was made to sit in a bus which was bound for her home. The photograph of her mother was shown to him and others on 12.07.2012 in the house of his maternal grandfather. But before that, as it appears from the evidence of the witnesses, the inquest was done; body was sent for postmortem examination and thereafter, it was handed over to "Ambedkar Organization" for cremation. At what stage did P.W.10, the investigating Officer, learnt that this dead body could have been of the mother of P.W.5 for him to have approached P.W.5 and his father/P.W.13 at Sihma i.e. the home of the maternal grandfather of P.W.5. What was the lead for the Investigating Officer to have gone to P.W.5 at a different place thus remains unknown.

24. There is yet another fact that we have noticed. A peculiar procedure appears to have been



adopted by the Investigating Agency in releasing the dead body in favour of an Organization for its cremation after the postmortem, even when there was some lead to the police about the deceased being the mother of P.W.5 or wife of P.W.13. If the Police had information about the identity of the deceased till the evening of 12.07.2012, the dead body ought not to have been handed over to any charitable organization; rather the police ought to have waited for further confirmation regarding her identity.

25. The postmortem is stated to have been conducted on 12.07.2012 at 2:30 AM. There had been no sign of rape. The death was by asphyxia. Then what was the reason for the police to charge-sheet the appellants under Section 376 of the I.P.C. The answer is obviously the confession of the appellants. We, therefore, find that the confession of the appellants was extracted under duress and, on that presumption, the investigation proceeded or else, there would have been no charge in the beginning for the offence under Section 376 I.P.C.



Otherwise also, it appears to be rather unbelievable that the appellant/Shankar Singh along with his own relative/Mangal Rai would commit rape on his own sister-in-law. Though it cannot be said with certainty about any human mind thinking of committing crime but, in the present set of circumstances, the accusation does not appear to be believable. The deceased was in the company and in the home of appellant/Shankar Singh. Shankar Singh had managed to get Rs. 1,50,000/- for helping out the deceased. That she had gone to Shankar Singh was known to the husband of the deceased also. With this family ties between Shankar Singh and the deceased, it is difficult to accept that the deceased was raped and killed by Shankar Singh, who was aided by his brother-in-law Mangal Rai (Appellant). Had he harboured such intentions, the safest place was his own house where the deceased was present for couple of days or perhaps his other house where nothing incriminating was found. The police appears to have proceeded with blinders on and that is the reason



why recovery of Sari and a pair of slippers and cash of Rs. 10,000/- from the house of appellant/Mangal Rai was perceived by the police to be a set of recoveries which were incriminating against the appellants.

26. We have no record of those articles having been put on identification by the family members. P.W.10 has only made a general statement that the family members of the deceased had identified those articles to be of the deceased. A Sari or for that matter a pair of slippers could be used by any female member of the house. After all, the own sister of the deceased resided as the wife of Shankar Singh. The sister of the deceased was present in the house along with the deceased, which gets confirmed from the deposition of P.W.5 who, on 10.07.2012, had visited Shankar Singh's house. The deceased was absolutely comfortable in the house of Shankar Singh. Had it not been so, she would have been come back to home along with her son.



27. With these background facts, it has been urged before us that the yawning gaps in the prosecution case cannot be bridged and those isolated pieces of information cannot be forged together for asserting that only the appellants had killed the deceased and nobody else.

28. It is not even a case of circumstantial evidence where the only inescapable conclusion is that the deceased was killed by the appellants and none else. No incriminating circumstance surfaced to be incriminating till the time the deceased left for her home. Why would she be killed by the appellants and thrown at a place which is near to her home. This story does not appear to be believable.

29. In the set of facts unfolded during the investigation and the trial, there could have been a possibility of the deceased returning home with Rs. 1,50,000/- when, on way, she was waylaid, dispossessed of the money and killed. If the appellants had any reason



to take back the money from the deceased, it would not have been given to her in the first instance. If it were for the lust for flesh, we do not have evidence strong enough to indicate that the deceased was subjected to any sexual misdemeanor. What then remains is a guess work and that also without any foundation.

30. The Supreme Court as well as this Court has consistently held that for convicting any person for as serious an offence as murder, the evidence must be complete. The deceased "may have" been murdered at the hands of the appellant is not the test which a trial court should put to the prosecution to prove its case but, the deceased "must have" been killed by the appellants is the parameter on the basis of which judgment ought to have been pronounced.

31. Not a single part of the story therefore appears to be believable. We say so with repetition for the reason that for no evidence, Section 376 was added during the course of investigation. Was it not only to justify the



confession extracted from the appellants? If not, then what was the reason for spinning such a story.

32. Thus, every effort of the Investigator has failed to convince us that only the appellants had killed the deceased.

33. The prosecution has thus failed miserably in proving the charge against the appellants.

34. We find the Trial court judgment to be based on conjectures and surmises. The judgment and order of conviction therefore cannot be sustained.

35. We have thus no option but to set aside the same and acquit the appellants of all the charges, and we do so.

36. Both the appellants are acquitted of the charges under Sections 302 and 201 with the aid of Section 34 of the I.P.C.

37. The appellant Shankar Singh (CR. APP (DB) No. 19 of 2015) is in custody. He is directed to be



released forthwith from jail if not required to detain in any other case.

38. Appellant Mangal Rai (CR. APP (DB) No. 114 of 2016) after remaining in custody for nine (9) years has been released on bail. His liabilities under his bail bonds are discharged.

39. Both the appeals are allowed.

40. A copy of the Judgment be transmitted to the Superintendent of the concerned Jail for record and compliance.

41. The records of this case be also dispatched to the Trial court forthwith.

(Ashutosh Kumar, J)

(Shailendra Singh, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.07.2023
Transmission Date	14.07.2023

