

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.924 of 2022

Arising Out of PS. Case No.-214 Year-2014 Thana- BARACHATTI District- Gaya

Dil Kumar Yadav S/O Kuleshwar Yadav R/V- Padeya, P.S.- Barachatti,
District- Gaya

... .. Appellant/s

Versus

1. The State of Bihar
2. Birendra Yadav S/o Late Lakhan Yadav R/v- Padeya, P.S.- Barachatti,
District- Gaya

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Surya Narayan Yadav, Adv. Mr. Binod Kumar Sinha, Adv. Mr. Ashok Kumar, Adv.
For the State	:	Mr. Bipin Kumar, APP
For the Resp. No.2	:	Mr. Ajay Kumar Thakur, Adv. Md. Imteyaz Ahmad, Adv. Mrs. Vaishnavi Singh, Adv. Mr. Purushottam Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 21-08-2023

The appellant is the father of the deceased who has preferred this appeal aggrieved by the judgment and order of acquittal in favour of respondent no.2 who had been put on trial for killing his son, a twelve years old child.

2. We have heard Sri Surya Narayan Yadav, learned advocate for the appellant/Informant and Mr.



Ajay Kumar Thakur for respondent no.2. We have also perused the Lower Court records.

3. The appellant/Informant has lodged the FIR on 23.05.2014 alleging that his son (deceased) had gone missing since 21.05.2014. In the aforementioned report, it was alleged by the appellant, who has been examined as P.W.7 at the trial, that the deceased was playing along with his sister Suhani (P.W.6) in the field where respondent no.2 was also present and roaming around. After sometime, the daughter of the appellant came back home for quenching her thirst. In the meantime, it has been alleged, respondent no.2 kidnapped the deceased and the reason for the appellant to assert is that when the sister of the deceased again went out in the fields to play, she saw neither her brother nor respondent no.2. The sister of the deceased thereafter came back home and told the appellant that respondent no.2 has taken away her brother. A search was made by the appellant and his family members on



the same day but to no avail. A day later i.e. on 22.05.2014, an information was given by the appellant to the Officer In-charge of the concerned police station whereafter some enquiries were made by the police but nothing happened. On 23.05.2014, at about 9 o'clock in the day, a word went round in the village that a dead body is floating in the village well. The appellant and his family members went there and immediately identified the dead body to be that of his son. The appellant claims to have informed about it to the Officer In-charge of the police station whereafter the police party arrived and took out the dead body from the well. The appellant, therefore, had alleged that because of old enmity, respondent no.2 has kidnapped his son, killed him and thereafter, in order to screen the offence, threw the dead body in the well.

4. On the basis of the aforementioned written report, Barachatti P.S. Case no.214 of 2014 dated 23.05.2014 was registered for investigation of offences



under Sections 364 and 302 of the Indian Penal Code.

5. The police after investigation submitted charge-sheet against respondent no.2 whereupon cognizance were taken and respondent no.2 was put on trial.

6. The Trial court, after having examined nine witnesses on behalf of the prosecution and two on behalf of the defence, acquitted the respondent no.2 of all the charges, holding that the circumstances for declaring the guilt of the respondent was not complete in any manner whatsoever. For coming to this conclusion, the Trial court took into account the fact that even when the daughter of the appellant (sister of the deceased) had informed in her house that respondent no.2 had taken away her brother, the appellant did not make any allegation against him in the report which was lodged by him on 22.05.2014 about missing of his son. It was only on 23.05.2014 i.e. after the dead body was recovered from the well that the FIR was lodged in which the story



of respondent no.2 having kidnapped and killed the deceased was introduced.

7. Though the aforementioned story has been repeated by other prosecution witnesses, all of whom are closely related to the appellant and the deceased, but the question as to why the name of respondent no.2 did not figure in the complaint lodged by the appellant a day after the deceased went missing, kept staring at the Trial court, which issue could never be resolved by the prosecution.

8. Thus, holding that there is no direct or indirect evidence of commission of crime as alleged, the Trial court after reiterating the *Panchsheel* principles in cases of circumstantial evidence, acquitted the respondent.

9. Mr. Yadav, learned counsel for the appellant has submitted that true it is that in the missing report lodged by the appellant a day after his son went missing does not mention the name of the respondent no.2 but,



that by itself, does not weaken the prosecution case in its entirety. Everybody in the family of the appellant knew that respondent no.2 had been moving around in the field when the deceased and his sister were playing. During the brief interregnum when the sister of the deceased came back home and again went back to the field, both of them viz. the deceased and respondent no.2 were not to be found.

10. Mr. Yadav has further pointed out that for all the while the search was being made, the respondent no.2 was not present in his house. There is past enmity between the appellant and the respondent no.2 and, therefore, there was something more than only speculation of respondent no.2 having kidnapped and killed his son for avenging the enmity.

11. According to the FIR, Mr. Yadav argues, the dead body was recovered from the well by the police party which had been informed by the appellant himself that the dead body of his son is floating in the well.



12. The postmortem report, according to Mr. Yadav, clearly makes out a case of murder of the deceased and thereafter throwing him in the well. He says so on the strength of the opinion of the Doctor (P.W.9) that there were abrasion at the back of the head of the deceased which was placed below the occipital region and it extended obliquely towards the ear. The cranial cavity also contained blood clots. There could have been no confusion regarding the deceased having been killed first and then thrown in the well. In this context, Mr. Yadav has argued that the entire deposition needs to be seen.

13. To tie the strings together, it has been urged on behalf of the appellant that the respondent no.2 was in the look out for an opportunity to avenge the enmity and he found one when the deceased was in the field alone for sometime. This opportunity was grabbed by respondent no.2 who took him to some unknown place, killed him and thereafter in order to



adroitly put up an appearance of the deceased having accidentally died by falling in the well, threw the dead body in the well and absconded himself. He, therefore, submits that the judgment delivered by the Trial court is absolutely perverse and is based on a doctrinaire approach that without connecting every dot in the circumstantial penumbra, in the absence of which no conviction could have been recorded.

14. As opposed to the aforementioned submissions, Mr. Thakur has urged that there is not an iota of evidence in the entire case record to even remotely suggest that the appellant and only him had killed the deceased. The premise on which such statement is based is firstly the absence of any accusing finger on the respondent no.2 in the missing report lodged by the appellant a day after the deceased went missing. By that time, the appellant had already learnt from his daughter (P.W. 6) that respondent no.2 was ubiquitous by his presence in the field near a bush and within a short time



when P.W. 6 came back to the field, neither the deceased nor respondent no.2 were to be found.

15. This story has been narrated by all the witnesses who are related to the appellant as well as the deceased. This therefore presupposes, Mr. Thakur has contended, that the information about respondent no.2 being present at the place of occurrence was communicated by P.W. 6 to all the members of the family. This being the information to the appellant, there is no reason why there was no accusative finger, even by way of suspicion on respondent no.2. Secondly, Mr. Thakur has submitted that from the medical testimony of the deceased, it would appear that the deceased had accidentally fallen in the well while playing. Mere presence of an abrasion below the occipital region, specially when the injury viz. abrasion is found in a lateral position, extending up to the earlobes, it was highly unsafe for the Doctor conducting the postmortem to have conclusively held that the deceased died out of



an injury caused by hard and blunt substance. Nothing appears to be in the postmortem report which would indicate that any effort was made by the Doctor to find out whether the injury was ante-mortem or the death was because of the drowning. A conclusive finding of the Doctor would have clinched the issue so far as homicidal murder of the deceased was concerned.

16. Lastly, it is submitted that the very attempt of the appellant in introducing the story of a demand of ransom of Rs.50,000/-, which story appears to have been repeated by all the prosecution witnesses, makes the prosecution case even more doubtful. When was such demand made and for what reason has not been stated by the appellant. If the appellant feared any onslaught, he would have sounded it in his family. Both, the appellant and the respondent no.2 are witnesses against each other in two different murder cases. If respondent no.2 had a criminal background, the appellant also did not lag behind.



17. Thus, Mr. Thakur concludes that after the dead body was found, the appellant took the opportunity, in a brazen manner, in falsely framing the respondent with whom he has not been on good terms.

18. After having heard the learned counsel for the parties and having perused the records, we have seen some glaring facts in this case for us to affirm the judgment and order of acquittal.

19. As contended on behalf of the respondent no.2, the appellant did not name him in the missing report. We have also found that the appellant has not made a correct statement in the F.I.R. that he had informed the police about the dead body of the deceased floating in the well when the police party arrived and took out the dead body from the well.

20. The I.O. of this case (P.W.8) has categorically asserted that he had received an information at the police station about the death of a person in the village and when he came to the concerned



village, he found the dead body of the deceased lying on a cot. Obviously, therefore, the dead body was spotted by the villagers and the appellants and his family members and only thereafter it was taken out. Till such time, there was no accusation in the air about the respondent no.2 having committed the crime.

21. The I.O., we have found, has further denied that the sister of the deceased made any such statement which she had made before the Trial court. Obviously, therefore, P.W.6, the sister, was only telling the Trial court what she had been tutored to say.

22. There is yet another reason for us to doubt the accusation. Respondent no.2, if the prosecution case is to be believed, was ultra quick in consummating his act. Only for a brief while, the sister of the deceased had disappeared from the scene. The field where the children were playing is a place which is frequented by children and other people. According to the evidence on record, while the deceased was playing with his sister, there



were other children playing in the field. Absence of any independent person of the village coming to the witness-stand to talk about the respondent no.2 having taken the deceased with him and killing and thereafter throwing him in the well sends us doubting about the correctness of the prosecution version.

23. All the witnesses who have spoken about the demand of ransom money by respondent no.2 obviously are repeating what the appellant had to say in the F.I.R. As argued by Mr. Thakur, when was such demand made and for what has remained known. The parties are at loggerheads but for various reasons. Respondent no.2 resides nearly in the same village. With this evidence, it will be difficult to presume that the deceased was first kidnapped and then killed and then his dead body was thrown in the well.

24. A look at the postmortem report further confirms that the deceased might have accidentally fallen in the well. The injury beneath the occipital region



in the nature of an abrasion further confirms that in all its probability, it would not have been result of any attack from behind or else the injuries would have been longitudinal in nature. A transverse positioning of the injury beneath the occipital region is reflective of an accidental fall over a hard substance. No investigation appears to have been made whether the village well had any fences. The presence of blood clots in the cranial cavity could be the impact of injury beneath the occipital region because of fall.

25. We have also found, with disgust, that the viscera report was not brought on record. There are some lateral evidences also which go in favour of respondent no.2. There is a reasonable explanation of the absence of respondent no.2 from his house for a brief while in his statement under Section 313 of the Cr.P.C. We have also found from the deposition of I.O. that in the first instance, no effort was made to arrest the respondent no.2 but, shortly thereafter i.e. after his



being named in the F.I.R., he was arrested. There is complete absence of even a rumor in the village that in order to avenge the enmity, the respondent no.2 had committed such a dastardly act of killing the son of the appellant. Precisely for this reason, no independent person has come in support of the prosecution case.

26. The Trial court is absolutely justified therefore in holding that in the case at hand, the circumstances from which any conclusion of the respondent no.2 having killed the deceased was not fully proved; the circumstances, if at all those existed, were not conclusive in nature and even if all the facts were so established, it would not be consistent only with the hypothesis of the guilt and inconsistent with the innocence of respondent no.2. The Trial court has referred to the judgments of the Supreme Court in *the State of Uttar Pradesh Vs. Dr. Ravindra Prakash Mittal, (1992) 3 SCC 300; Kanhai Mishra Vs. the State of Bihar, AIR 2001 SC 1113; Mohd. Mannan Vs. the State*



of Bihar, (2011) 5 SCC 317; Surendra Kumar Vs. the State of UP, (2020) 14 SCC 750 and Udaipal Singh Vs. the State of Uttar Pradesh, (1972) 4 SCC 142. The Trial court has also referred to the judgment in *Matru @ Girish Chandra Vs. the State of Uttar Pradesh (1971) 2 SCC 75* and has reminded himself of the advisory that merely because a person has absconded for sometime does not necessarily lead to a positive conclusion of guilty mind or culpable intent.

27. As noted above, we doubt the allegation of the respondent no.2 having absconded for a brief while as he was not found to be in house when the police first went in search of him.

28. We, after giving anxious consideration to the whole set of facts, even doubt that the investigation in the case could have proceeded on even the theory of last seen.

29. But, for the appellant and his family members, no body has talked of respondent no.2 being



present at the time when the deceased and his sister were playing in the field.

30. For these reasons, we find that no interference is required with the judgment and order of acquittal, giving a clean chit to the respondent no.2.

31. The appeal is dismissed.

(Ashutosh Kumar, J)

(Partha Sarthy, J)

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AFR/NAFR	AFR
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