

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.211 of 2019

Arising Out of PS. Case No.-70 Year-2007 Thana- FALKA District- Katihar

1. Shila Devi, aged about 50 years, Female, Wife of Late Khantar Mandal, Resident of Village - Pothia, P.S- Falka, Distt - Katihar.
2. Bhola Mandal, aged about 50 years, Male, Son of Baijnath Mandal @ Baudhnath Mandal, Resident of Village - Pothia, P.S- Falka, Distt - Katihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 194 of 2019

Arising Out of PS. Case No.-70 Year-2007 Thana- FALKA District- Katihar

Boudhnath Mandal @ Baijnath Mandal, aged about 75 years, Male, Son of Late Jailal Mandal, R/o village- Pothia, P.S- Falka, District- Katihar

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 211 of 2019)

For the Appellant/s : Mr. Bhola Prasad, Advocate
Mr. Sanjeev Kumar Singh, Advocate
Mr. Indrajeet Kumar, Advocate

For the State : Mr. Sujit Kumar Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 194 of 2019)

For the Appellant/s : Mr. Bhola Prasad, Advocate
Mr. Sanjeev Kumar Singh, Advocate
Mr. Indrajeet Kumar, Advocate

For the State : Mr. Sujit Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)

Date : 09-05-2024

At the very outset, it has been submitted by
learned counsel who is appearing for the appellants in Cr.
Appeal (DB) No. 211 of 2019 that the learned Advocate Mr.



Ajay Kumar who was appearing in Cr. Appeal (DB) No. 194 of 2019 has passed away.

2. We therefore, request Mr. Bhola Prasad to assist in Cr. Appeal (DB) No. 194 of 2019 along with Cr. Appeal (DB) No. 211 of 2019.

3. The present appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the judgment of conviction dated 17.01.2019 and order of sentence dated 19.01.2019 passed in Sessions Trial No. 589 of 2007 (arising out of Falka P.S. Case No. 70 of 2007, by learned Additional District and Sessions Judge, Fast Track Court- 2, Katihar by which the appellants have been convicted for the offences punishable under Sections- 302 and 201/34 of I.P.C. and sentenced to undergo life imprisonment and a fine of Rs. 10,000/- under Section-302 of I.P.C. and in default of payment of fine, further rigorous imprisonment for two years and fine of Rs. 2,000/- under Section 201 of I.P.C. and the sentences have been ordered to run concurrently.

4. Heard Mr. Bhola Prasad, learned counsel for the appellants, assisted by Mr. Sanjeev Kumar Singh, Mr. Indrajeet Kumar and Mr. Sujit Kumar Singh, learned A.P.P. for the State.



5. The brief facts leading to the filing of the present appeals are Falka P.S. Case No. 70 of 2007 that in the evening the informant (PW-11 Domi Mandal) in the evening of 22.06.2007 saw the appellant including 3-4 unknown persons called her niece Urmila Kumar @ Aruni Kumari from her home and took her with them. The niece did not return to her home. The informant was out of village for last 3-4 days, when he came back on 23.06.2007, he was informed by his family regarding the matter. When the informant inquired in the village, the neighbours informed that on 22.06.2007 the appellant and 3-4 unknown persons have been seen killing Urmila Kumari at the Basa (agriculture house) of co-appellant Bhola Mandal, which is situated nearby western side of the village.

6. After filing of the F.I.R., the investigating agency carried out the investigation and during the course of investigation, the investigating officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial No. 589 of 2007.

7. During course of the trial, the prosecution has



examined altogether 12 (Twelve) witnesses. They are PW-1 Paltu Mandal, PW-2 Shiv Pujan Mandal, PW-3 Dr. Rajnikant Jha, PW-4 Dr. Om Prakash Singh, PW-5 Chamak Lal Yadav, PW-6 Manoj Mandal, PW-7 Laxmi Prasad Yadav, PW-8 Gyatri Devi, PW-9 Dilchand Mandal, PW-10 Renu Kumari, PW-11 Domi Mandal and PW-12 Shambhu Kumar Mandal. Out of the aforesaid 12 witnesses, PW's Nos. 5, 6, 7, 8, 10 and 11 have been declared hostile. The Investigating Officer of the case has not been examined during the trial.

8. Learned counsel for the appellant Mr. Bhola Prasad submits that the reason behind the murder of informant's niece is that the brother of the informant Khantar Mandal died 7-8 years ago. Thereafter, the sister-in-law of the informant i.e. appellant no-1 was in illicit relationship with appellants Bhola Mandal and Baijnath Mandal, which was disliked by the niece (deceased) of the informant, i.e., Urmila Kumari and she used to protest with regards to the same. In the meantime, appellant Bhola Mandal got a registered deed in respect to one Bigha of land, executed by appellant no.-1 in his favour which was also opposed by the deceased.

9. Learned counsel further stated that after completion of investigation, the investigating Officer on 21.09.2007



submitted charge sheet against the appellants for the offence under Sections 302 and 201/34 of Indian Penal Code, where upon cognizance has been taken by the learned Court below against all accused persons including the appellants.

10. Learned counsel for the appellants stated that, beside the oral evidences, the prosecution has brought on record certain documentary evidence. They are Exhibit No. 1 Injury Report of appellant Bhola Mandal, Exhibit no. 2 postmortem report, Exhibit no. 3 signature of PW-7 on written report, Exhibit No. 4 signature of Domi Mandal, the informant, on written report and Exhibit no. 5 is Inquest Report and defence has not produced any oral or documentary evidence during the trial. It is also stated by learned counsel that appellant Shila Devi is widow of Late Khatar Mandal. Other brothers of Late Khantar Mandal are Late Chikru Mandal, husband of PW-8, Paltu Mandal, (PW-1). The informant is a distant relative of the appellant Shila Devi and victim Urmila Kumari.

11. Lastly, learned counsel submitted that the investigation officer has not been examined during the trial. Non examination of Investigating Officer has caused serious prejudice to the defence. It is submitted here that none of the independent witness has supported the prosecution version.



Contradictory statement by prosecution witnesses before police and before court coupled with non-examination of Investigating Officer in trial is fatal for the prosecution. It is further submitted that the prosecution miserably failed to prove the motive, though alleged in First Information Report. The statements of prosecution witnesses run contrary to each other. In view of the aforesaid facts, the impugned Judgment of conviction and the order of sentence is bad and not sustainable. The learned court below failed to consider and appreciate that the entire prosecution version is improbable and could not be believed. The appellant no. 2 in Cr. Appeal (DB) 211 of 2019 namely, Bhola Mandal and co-accused in Cr. Appeal (DB) no. 194 of 2019 namely, Boudhnath Mandal are son and father respectively. It is alleged that both have illicit relation with Shila Devi appellant no. 1 in Cr. Appeal (DB) No.211 of 2019. Which is quite difficult to comprehend. Moreover, appellant Shila Devi is the mother of victim Urmila Kumari and she has been convicted for killing of her own daughter. Such allegations are unheard of in our society. The whole prosecution version is tainted with oblique motive to get rid of the accused persons and grab their land.

12. On the other hand, learned Additional Public



Prosecutor Mr. Sujit Kumar Singh has vehemently opposed the appeals.

13. The learned APP stated that PW-1 Paltu Mandal and PW-2 Shiv Pujan Mandal stated that deceased Urmila Kumari was the daughter of his *Sarhu* (brother-in-law) and they asked about Urmila Kumari from Shila Devi but she denied having any knowledge about her. PW-2 Shiv Pujan asked Domi Mandal (Informant of this case) and found the dead body where the informant gave information to the Police. The appellant Shila Devi with the help of Bhola Mandal and Baijnath Mandal murdered Urmila Kumari and dead body was buried. PW-1 Paltu Mandal heard that Bhola Mandal and Shila Devi wife of his deceased brother, has committed murder of Urmila Kumari.

14. It is further submitted by learned APP for the State that considering the aforesaid statements and the evidence on record, learned trial court has rightly convicted the appellants and the present appeals should not be entertained.

15. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.



16. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court.

17. Before the Trial Court, prosecution examined 12 witnesses.

18. PW-1 Paltu Mandal has stated in his examination in chief that the incident has happened one and a half years ago in the morning when he was at home and he heard that Urmila has been killed by Bhola and thereafter Bhola fled away. He also stated that he has identified the accused and the co-accused Sheela Devi who are present in the Court.

18.1. In his cross-examination, he has stated that he has three brothers and Sheela Devi is the wife of his deceased brother Khantar Mandal and thus she is his relative. He further stated that he is giving his deposition voluntarily. There is a dispute with regard to land between Bhola Mandal and others. The murder has been committed in the fields and he was at home at the time of incident. Further, he has stated that he had not affixed his signature on statement given to police and the police has come to his door and recorded his statement. He also stated that he never had any scuffle with the witness Bhola Mandal. PW-1 has further stated that he and Sheela Devi share



the same courtyard which is now fenced and PW-1 is not giving a false statement in collusion with the informant.

19. PW-2 Shiv Pujan Mandal has stated that Urmila Kumari was the daughter of his *Sarhu*. When he asked accused Shila Devi about Urmila Kumari she stated that the PW-2 should have no concern with Urmila Devi. Then he met Domi Mandal and Baijnath Mandal and found sign of murder. He went towards west and found dead body of Urmila buried. He informed the Police station. Police came and brought the dead body in the police station. He further stated that Bhola Mandal had illicit relation with the Shila Devi which was seen by Urmila Kumari. Urmila had stated to say to his uncle about their affair. For which Bhola Mandal and Shila Devi committed murder of Urmila Kumari by pressing her neck in presence of Baijnath Mandal. All the three persons had buried the dead body of Urmila Kumari in kita Gosai Kothhi by digging ditch by spade.

20. PW-3 Dr. Rajnikant Jha is Medical Officer. He has stated that on 27.06.2007 he had examined Bhola Mandal S/o Baijnath Mandal r/o village Pothia, P.S. Falka Distt-Katihar and found following injuries on this person.

1. Lacerated wound measuring 2 c.m. diameter skin deep of right thumb.
2. Swelling at right ankle age of injury within 12 hrs caused by hard blunt substance. He



identified his writing and signature of injury report which is marked ext. 1

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21. PW-4 Dr. Om Prakash Singh has stated that he had performed the post mortem of the deceased Urmila Kumari @ Aruni Kumari aged about 13 yrs. Hindu, female D/o Late Khantar Mandal r/o village Pothia, P.S. Falka, Distt-Katihar identified by Fulchand Ram constable and had found the following ante mortem injury.

1. Rigor mortis was absent in upper and lower limb.
2. External appearances- The body was in the stage of decomposition, Pilling of the skin was present from here and there. Pressure mark was present on the frontal and front lateral aspect of the neck. The external genitalia was within external limit. On Dissection of the head, Neck, Thorax and abdomen cartilage were fractured. Stomach was empty. Uterus was small and empty. All other internal organs were in the stage of decomposition and intact.

Cause of death - Asphyxia due to compression over the neck. Time Since death more than 48 hrs. within a week. He identified his writing and signature on post mortem report which is marked ext. 2.



22. PW-5 Chamaklal Yadav has stated that there was snake bite to a girl which died later on. He has been declared hostile.

23. PW-6 Manoj Mandal has stated that he cannot say how Urmila Kumari @ Aruni died. He has seen the police at his house. He has also been declare hostile.

24. PW-7 Lakshmi Pd. Yadav has stated that he knows nothing about the occurrence. He is also declared hostile.

25. PW-8 Gayatri Devi has stated that Urmila Kumari was found in Bhindi field. She cannot say how she died. She is also hostile declared.

26. PW-9 Dilchand Mandal is the Bahnoi of the informant. He has stated that he cannot confirm who has committed murder of Urmila Kumari.

27. PW-10 Renu Kumari has stated that she knew after three months that Urmila Kumari died. She has been declared hostile.

28. PW-11 Domi Mandal has stated that Inspector had come to his house. He had signed over the page produced by Sub Inspector which was already signed by the other persons. He has been declared hostile. He identified his signature on his statement which is marked ext. 4. He has further



stated that police on search recovered dead body of Urmila Kumari from a ditch. Further, Urmila Kumari has been residing with her aunt Shila Devi in the same house. Shila Devi was aged 25-30 yrs. at the time of occurrence. Her husband had died. Baijnath Mandal used to come in the house of appellant Shila Devi.

29. PW-12 Shambhu Kumar Mandal has identified his signature on carbon copy of inquest report which is marked ext. 5.

30. In this case, Investigating Officer has not been examined.

31. It would emerge from the evidence that out of 2 (two) inquest report witnesses only one has been examined in the trial as PW-12. The aforesaid inquest report witness has only identified his signature and nothing else. Rather, when he was in way to field, the police made him put a signature on a blank paper. Another inquest report witness has not been examined in the trial. The investigation conducted and concluded by the Investigating Officer is vague. Moreover, the witnesses are hear say witness and have said that appellant Bhola Mandal has been seen carrying the dead body of Urmila Kumari in a gunny bag and the appellant Shila Devi and co-



accused were following appellant Bhola Mandal but the Investigating Officer did not try to locate the person who was the eye-witness to the occurrence. The entire prosecution is based on surmise and a conjecture. Conviction based on such perfunctory prosecution could not be allowed to stand.

32. It is relevant to note that PW-2 who happens to be a relative of the victim girl has stated that the age of victim was 7 to 8 years. Then witness further claims that he along-with the informant went to the field and saw the dead body buried. The witness has stated the manner of offence as if he is an eye witness, but from the deposition of the PW-2, it is evident that he got knowledge from one Gauri Mandal. However, statement of said Gauri Mandal has neither been recorded during the investigation nor he has been produced as witness in trial. The statement of prosecution witness is self-contradictory and not trust worthy. Rather it appears that the said witness has hands in glove with the informant and is sub serving oblique motive and the inquest report, i.e., Exhibit-5 has been prepared on 25.6.2007 at about 2 P.M. The place where the dead body was found is the field of Medi Mandal. Further, it transpires that the dead body was found by the villagers. However, from bare perusal of the deposition of PW-2 and 11, it appears that the dead body has



been recovered in presence of the police. The investigation is under the cloud of doubt.

33. It would further reveal that out of 8 (eight) F.I.R. named witnesses, 5 (five) witnesses, including the informant i.e., PW-1 have been declared hostile. All the aforesaid hostile witnesses have categorically said that they have no knowledge as to how the victim has been murdered. In view of the above facts, the prosecution appears to be based on false, frivolous and concocted story. The written report divulges that the informant gathered information about the incident from his co-villager. However, the informant has not disclosed the name of the co-villager from whom the informant got the information. Moreover, the informant, in his evidence resiled from the motive for committing offence as alleged in the written report. It is submitted here that the informant (PW-11) in his evidence has denied that he ever searched the dead body of Urmila Kumari. Besides, he was also not aware about place from where the dead body was recovered. However, PW-2 claims that Domi Mandal the informant accompanied in searching the dead body of Urmila Kumari. The contradiction in the deposition of prosecution witnesses is fatal for the prosecution.

34. From the deposition given by the PW-4, Dr.



Om Prakash Singh, it is revealed that body was in the stage of decomposition, but there was pressure mark present on the frontal and front lateral aspect of the neck. Neck Thorax and abdomen Cartilage were fractured, Cause of death due to asphyxia due to compression over neck.

35. PW-11, informant Domi Mandal only identifies his signature on the written statement and was declared hostile, but stated in his deposition that in course of investigation and search, Police recovered dead body of Urmila Kumari from a ditch. Urmila Kumari resided with appellant Shila Devi. Investigating Officer has not been examined.

36. Thus, from the aforesaid deposition of the prosecution-witnesses, we are of the view that there are major and sustained inconsistency in the deposition of the prosecution-witnesses.

37. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt, despite which the trial Court has recorded the impugned judgment of conviction and the order of sentence. As such, the same are required to be quashed and set aside.



38. Accordingly, the impugned judgment of conviction dated 17.01.2019 and order of sentence dated 19.01.2019 passed by the learned Additional District and Sessions Judge, Fast Track Court no.2, Katihar, in connection with Sessions Trial No. 589 of 2007 (arising out of Falka P.S. Case No. 70 of 2007) are quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

39. Since, the appellants of Cr. Appeal (DB) No. 211 of 2019, Shila Devi and Bhola Mandal are in custody, hence they are directed to be released from custody forthwith, if their presence is not required in any other case and appellant of Cr. Appeal (DB) No. 194 of 2019, Boudhnath Mandal @ Baijnath Mandal is on bail and he is discharged from liability of bail bonds, if any.

40. The appeals stand allowed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

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