

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.604 of 2022

Arising Out of PS. Case No.-66 Year-2015 Thana- AURAI District- Muzaffarpur

Devendra Ray, Son of Ramji Ray, R/O Village- Chainpur, P.S.- Aurai,
District- Muzaffarpur. Appellant

Versus

1. The State of Bihar
2. Amirnath Rai @ Amir Nath Bhagat @ Aminnath Bhagat, Son of Late Ram Balam Ray, R/O Village- Sahilarampur, P.S.- Hathauri, District- Muzaffarpur.
3. Suresh Mahto, Son of Muneshwar Mahto, R/O Village- Sahilarampur, P.S.- Hathauri, District- Muzaffarpur.
4. Raushan Ray @ Raushan Kumar, Son of Rajendra Ray, R/O Village- Sahilarampur, P.S.- Hathauri, District- Muzaffarpur.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Sanjay Kumar @ S.K., Advocate
For the State	:	Mr. Ajay Mishra, Addl.PP
For the Resp No.2	:	Mr. Hari Kishore Thakur, Advocate
For the Resp No.3	:	Mr. Ratneshwar Prasad, Advocate
		Ms. Nitu Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 23-04-2024

Heard learned counsel for the appellant, learned counsel for respondent no. 2, learned counsel for respondent no. 3 and learned Additional Public Prosecutor for the State.

2. The present appeal has been preferred by the informant under proviso to Section 372 of the Code of Criminal Procedure (in short 'CrPC') for setting aside the judgment dated 06.05.2022 passed by learned 1st Additional Sessions Judge, Muzaffarpur (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 378 of



2016 arising out of Aurai P.S. Case No. 66 of 2015 whereby and whereunder the learned trial court has been pleased to acquit respondent nos. 2 to 4 of the charges under Sections 302/364/201 of the Indian Penal Code (in short 'IPC').

3. As per the prosecution story, on 23.04.2015 at about 02:00 PM, the daughter of the informant (PW-7) went to village Mahrauli to get her clothes stitched by daughter-in-law of Ramchandra Sah and then went to Amnaur Bazar to buy lining but she did not return till evening. Thereafter, the informant searched his daughter but did not find her. On 26.04.2015, the informant lodged complaint at Aurai Police Station alleging that his daughter might be kidnapped or some untoward incident might have happened with her.

4. It appears that after investigation, the Investigating Officer (PW-9) submitted a chargesheet showing that sufficient materials have been found to appreciate against the accused persons for the offences under Section 302/364 and 201 IPC. In view of the chargesheet filed by PW-9, the learned Magistrate took cognizance of the offences and upon finding that the offences are triable by the court of sessions, committed the records to the court of sessions for trial.

5. It further appears from the records that the charges were framed against the accused persons vide order dated



02.11.2017 for the offences punishable under Section 302/364 and 201 IPC.

6. On behalf of the prosecution, altogether nine witnesses have been examined and altogether six documents were marked exhibits. The description of the witnesses and documents exhibited on behalf of the prosecution are as under:-

PW 1	Daresh Ray
PW 2	Bhuvan Ray
PW 3	Kamlesh Kumar
PW 4	Anandi Devi
PW 5	Sabita Devi
PW 6	Pawaniya Devi
PW 7	Devendra Ray
PW 8	Dr. Vipin Kumar
PW 9	Baban Baitha

Exhibit ‘1’	Signature of Devendra Ray on his written application
Exhibit ‘2’	Post mortem report
Exhibit ‘3’	CAF of Amirnath Ray
Exhibit ‘3/1’	Details of Amirnath’s Mobile No. 9525733716
Exhibit 4	Call detail from 01.01.2015 to 04.05.2015
Exhibit ‘4/1’	Call detail of Mobile No. 9934507905 from 28.04.2015 to 29.04.2015
Exhibit ‘4/2’	Call detail from 01.01.2015 to 28.04.2015
Exhibit ‘4/3’	Call detail of Mobile No. 9128079888
Exhibit ‘5’	Seizure List
Exhibit ‘6’	FIR



7. After closure of evidence of the prosecution, the statement of the accused under Section 313 CrPC were recorded.

Analysis of the Evidences

8. On analysis of the evidences produced by the prosecution, the learned trial court found that the prosecution case is based on circumstantial evidences but in this case, the Chronological chain of the circumstances has not been established by the prosecution. The learned trial court held that the confessional statement of Amirnath Rai (respondent no. 2) would not be admissible in evidence in terms of Section 25 of the Evidence Act. The learned trial court has held that the only circumstance shown is the mobile location of the deceased Krishna Devi and the accused Amirinath Rai and it is stated that both were in the same locality on 23.04.2015. The learned trial court held that the mobile tower location alone would not complete the chain of circumstances and no inference may be drawn that the accused had committed murder of the deceased Krishna Devi and had thrown the dead body in a well.

Submissions on behalf of the Appellant

9. Learned counsel for the appellant submits that the learned trial court had failed to appreciate the prosecution evidences keeping in view the dubious behaviour of the accused



persons and that there were materials which were indicating that the accused Amirnath was seen lastly with the deceased.

Submissions on behalf of the State and Respondents

10. On the other hand, learned counsel for the respondent nos. 2 and 3 as also learned Additional Public Prosecutor for the State have opposed this appeal. It is submitted that in this case, the learned trial court has meticulously examined the prosecution evidence and it has been rightly concluded that on the one hand, there is no direct evidence to support the prosecution case and at the same time, the circumstantial evidence are not such that the court would reach to an irresistible conclusion and hold the accused persons guilty.

Consideration

11. We have heard learned counsel for the parties and perused the records. There is no dispute that in this case there is no direct evidence. The whole case of the prosecution has been developed on the theory of “last seen”. Daresh Ray (PW-1) has only stated that when he reached at Sahila Rampur Chowk at 08:30 PM, he heard five persons whispering about the occurrence. In his cross-examination, he has stated that he got information about the occurrence from Devendra Ray, PW-7 (informant).



12. Bhuvan Ray (PW-2) had come to know about the occurrence from the informant, PW-1 and PW-2, therefore, both PW-1 and PW-2 are the hearsay witnesses and they are not proving any link for the circumstances leading to the murder of the daughter of PW-7.

13. Kamlesh Kumar (PW-3) has stated that he had seen the deceased going for stitching of her clothes. He had seen her at Amnaur Chowk. In his cross-examination, he has stated that he was told by Pappu Doctor that Amirnath Rai (respondent no.2) had taken away the deceased. Thus, this witness is also telling something on hearing from other persons.

14. Anandi Devi (PW-4) has stated that the deceased had gone for stitching of her cloth and this fact was told to her by the mother and father of the deceased. She does not know how Krishna Devi died. Similar is the statement of Sabita Devi (PW-5).

15. Pawaniya Devi (PW-6) has stated that one Ramsakal Ray had told her that he had seen Amir Lal on his motorcycle taking away towards Saidpur but in course of her cross-examination, she has stated that she had not personally seen the deceased going with Amir Rai.

16. Devendra Ray (PW-7), who is the informant of the case, has stated that some people told him that his daughter was



seen going on the vehicle of Amirnath. In his cross-examination, PW-7 has stated that Ramsakal Ray, Vinod Kumar, Ashok, Daresh Ray and Bhuvan Ray had told him that in the occurrence, the accused persons are involved.

17. The learned trial court has upon carefully analyzing the evidence of PW-1 to PW-7 recorded that they are either hearsay witnesses or have stated what they were told by others.

18. The I.O. (PW-9) had obtained the call detail report of the mobile number of the deceased Krishna Devi and accused Amirnath Rai. He has stated that he had not recorded the statement of Ramchandra Sah and his daughter-in-law. This witness had not gone to Amnaur market to inquire as to whether the deceased had gone there. This witness has stated that in course of investigation, he had recorded and expressed his apprehension about the involvement of husband of deceased Krishna Devi and mother of her husband but he did not know what had happened after he handed over the charge of the case to another Investigating Officer.

19. The Doctor, who conducted the autopsy on the dead body, has been examined as PW-8. He had found three injuries on the dead body and those were caused by impact of hard and blunt object. There were laceration of subcutaneous tissues and muscles



of the neck, fracture of tracheal rings and these were the internal injuries.

20. As an Appellate Court, we have analyzed the evidences on the record and have taken into consideration the opinion of the learned trial court as available in the impugned judgment. This Court is of the considered opinion that the learned trial court has examined the entire materials on the record and has rightly reached to a conclusion that the prosecution has failed to prove the guilt of the accused persons beyond all reasonable doubts.

21. We are reminded of the judgment of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda versus State of Maharashtra** reported in (1984) 4 SCC 116 and **Dilavar Hussain and Others versus the State of Gujarat and Another** reported in (1991) 1 SCC 253. Paragraph '152' of the judgment of **Sharad Birdhichand Sarda** (supra) reads as under:-

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh*¹.

This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh*¹⁷ and *Ramgopal v. State of Maharashtra*¹⁸. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case*¹:

1. 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129

17. (1969) 3 SCC 198 : 1970 SCC (Cri) 55

18. AIR 1972 SC 656 : (1972) 4 SCC 625



“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.””

22. Having regard to the aforementioned discussions, we find no merit in this appeal. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Jitendra Kumar, J)

SUSHMA2/-

AFR/NAFR	
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