

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1017 of 2018**

Arising Out of PS. Case No.-489 Year-2014 Thana- BHABHUA District- Kaimur (Bhabua)

Anwar Ansari, S/o Nabi Ansari @ Nabi Husain Ansari, R/o Vill.- Datiyaon,
Post - Kurasan, P.S.- Bhabua, District- Kaimur at Bhabua.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Yugal Kishore, Advocate
Mr. Parwej Khan, Advocate
For the State : Mr. Sujit Kumar Singh, App

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DR. ANSHUMAN)

Date : 25-10-2024

Heard learned counsel Mr. Yugal Kishore, for the appellant assisted by Mr. Parwej Khan, learned Advocate and Mr. Sujit Kumar Singh, learned A.P.P. for the respondent-State.

2. The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Code') challenging the Judgment of conviction dated 19.06.2018 and order of sentence dated 20.06.2018 passed by the Sessions Judge, Kaimur, Bhabhua in Sessions



Trial No. 349 of 2015, arising out of Bhabua P.S. Case No. 489 of 2014, whereby the concerned Trial Court has convicted the present appellant for the offences punishable under Sections 364 & 302 of the Indian Penal Code (hereinafter referred to as I.P.C.) and Section 27 of the Arms Act. Considering the provisions of the I.P.C., he has been sentenced to undergo life imprisonment under Section 302 of the I.P.C. along with a fine of Rs. 50,000/- and, in default of payment of fine, he has been sentenced to undergo R.I. for three months and sentenced to undergo life imprisonment under Section 364 of the I.P.C. along with a fine of Rs.50,000/- and, in default of payment of fine, he has been sentenced to undergo R.I. for four months. The appellant has further been sentenced to undergo R.I. for five years under section 27 of the Arms Act along with a fine of Rs.10,000/- and, in default of payment of fine, he has been sentenced to undergo R.I. for three months. All the sentences are directed to run concurrently.

3. As per the prosecution, in the evening of 06.11.2024, the accused person namely Anwar Ansari entered into the house of the informant equipped with a gun and thereafter, kidnapped the daughter of the informant with an intention to kill her and at the time of occurrence there was a



mobile phone of Micromax Company having Sim bearing No. 7543831799 with her daughter. The informant also alleged in her written report that at the time of said occurrence, the accused Anwar Ansari (present appellant) assaulted her with said firearm and at that time his mother namely, Taramuni was also present in the courtyard of her house.

4. On the basis of the written report of the informant, Bhabhua P.S. Case No. 489 of 2014 was registered under Sections 363, 364 of the I.P.C and 27 of the Arms Act against Anwar Ansari (appellant) and Taramuni. Subsequently, on recovery of the dead body of the victim, offence under Section 302 of the I.P.C. was also added in the F.I.R.

5. The police, after investigation, submitted the chargesheet under Sections 364 and 302 of the I.P.C. and under Section 27 of the Arms Act against the appellant but did not send up the other accused Taramuni for trial. The learned Court below took cognizance for the offences punishable under Sections 364 and 302 of the I.P.C. and under Section 27 of the Arms Act against the appellant and also took cognizance for the same offence against the co-accused namely, Taramuni who had not been sent up by the police for trial. After taking cognizance compliance of Section 209 of the Cr. P.C. has been made by



way of providing police papers to the accused persons and thereafter the case was committed before the Sessions Court for trial. After conclusion of the trial, the trial Court convicted the appellant and being aggrieved and dissatisfied by the said order of conviction and sentence, the appellant has preferred the present appeal.

6. To substantiate the case, in oral evidence, the prosecution has examined altogether eight witnesses viz. PW-1/Rafique Alam, PW-2/ Nazma Begum (who is the informant herself), PW-3/Kalamuddin Ansari, PW-4/ Dr. Rishikant Pandey, PW-5/Rehana Khatoon, PW-6/ Jawed Ansari, PW-7/ Sahnawaz and P.W.8 / Mukesh Kumar (I.O. of the case) whereas defense has also examined one witness namely Md. Mukhtar Ansari @ Mukhtar Alam. There were in total seven (7) exhibits in this case.

7. Learned counsel for the appellant has submitted that the appellant is innocent and has falsely been made accused by the informant and convicted by the Trial Court after trial. During the course of the trial altogether eight (8) witnesses have been examined by the prosecution in this case and the defense side has also examined one witness. From perusal of the entire prosecution case and evidence on record, it transpires that



except the evidence of P.W.2, no any prosecution witnesses have supported the case of the prosecution. P.W.1 is the brother of the informant who is not an eyewitness to the occurrence rather he is a hearsay witness, hence, the examination of P.W.1 has no value in the eyes of law. P.W.3 namely Kalamuddin Ansari is a co-villager of the informant and has stated that the dead body of deceased Kamar Jahan was found in the agricultural field of Sarvesh Singh. This witness has specifically deposed in his statement that on the alleged date of occurrence in the evening, 3-4 unknown persons came into the informant's house. The appellant and the deceased had illicit relations and both were living together for the last two years. The informant being the mother of the deceased was annoyed with the said relationship. The said witness has also stated that the deceased was pregnant due to the relationship with Anwar Ansari. Learned Advocate further submits that the entire story itself shows that this is a case of honour killing and the informant itself committed a crime but she has taken benefit of the earlier case filed by her against the appellant.

8. Learned Advocate further submits that in the examination-in-chief, P.Ws. 5 and 6 have stated that the deceased and the appellant were residing together, and due to



love and affection with the appellant, the deceased became pregnant. This fact also came during the doctor's examination. On being aware about the pregnancy of the deceased, the informant called the unknown criminals and killed her daughter. Learned Advocate further submits that from perusal of the examination of P.W.2 (informant), it is clear that the statement deposed by the informant is false and is full of suspicion. It is totally unbelievable that the accused persons 3-4 four in the number entered the house of the informant which is situated in the center of the village at about 6 O' Clock in the evening and kidnapped the daughter of the informant at gunpoint but no one has seen the appellant taking away the deceased. The further story of the informant is also unbelievable that her daughter was kidnapped in the evening and she did not raise any noise nor did she inform any nearby people about the said incident the whole night. The informant has also deposed that she went to the village at 2 O'clock in the day time with the police on the next day of kidnapping while all the witnesses and the villagers have stated that they saw the dead body of the daughter of the informant at about 7-8 O'Clock in the morning. Moreover, the informant despite having full knowledge of the death of her daughter lodged the F.I.R. on 07.11.2014 at about 9.30 A.M.



while the dead body was seen by the villagers in the morning under Section 363/364 of the I.P.C.

9. Learned Advocate further submits that there were no eye witness to the alleged occurrence of kidnapping except P.W.2 (informant) or the offences under Section 302 of the I.P.C. All the prosecution witnesses have stated that some unknown criminal have killed the daughter of the informant because the appellant and the deceased were living together due to love and affection and the informant was not happy with this relation. They further stated that when the appellant was out of village then the unknown criminals have killed the daughter of the informant.

10. Learned Advocate further submits that the trial Court convicted the appellant without following the provision of Section 313 of the Cr. P.C. as the Court had not put the question before the appellant regarding the explanation of evidence under Section 364 of the I.P.C. and Section 302 of the I.P.C. Hence, the conviction is liable to be set aside on the non performance of the ground mandatory provision of Section 313 of the Cr. P.C. He further submits that all the prosecution witnesses except P.W.1 (brother of the informant) and P.W.2 (informant) have not supported the case of the prosecution.



11. Learned Advocate further submits that the name of the appellant and his mother has been dragged in this case only due to the reason that there was an inimical term between the appellant and the informant and in that background, a criminal case was also lodged against the appellant for kidnapping the daughter of the informant. The victim was alleged to be kidnapped in the evening on 06.11.2014 but the F.I.R. was lodged after a lapse of 14 hours when the dead body was recovered in the same village. Moreover, the police station was available at a distance of 5 k.m. from the village of the informant which is a big village, but no one has informed the police regarding the alleged occurrence which is not sustainable in the eyes of law. It is a case of circumstantial evidence but there is no direct and circumstantial evidence has come against the appellant during the trial.

12. Per contra, learned APP appearing on behalf of the Respondent-State supported the impugned judgement of conviction and order of sentence passed by the Trial Court. He submits that on the basis of a written application submitted by the informant regarding kidnapping of her daughter on gun point with intention to kill her Bhabhua P.S. Case No. 489 of 2014 was instituted. Subsequently, the dead body of the victim



was found lying in a field. In course of trial, eight (8) prosecution witnesses have been examined, out of which P.W. 2 is an eye witness of the first occurrence of kidnapping, while P.W.3 is the witness before whom dead body was recovered in the field of one Sarvesh Singh. P.W. 4 is the doctor who had conducted the postmortem upon the dead body of the deceased. P.W. 5 and 6 have deposed on some important points and P.W. 8 is the I.O. of the case who has investigated the case. The motive of the occurrence is that prior to the present occurrence, the appellant kidnapped the deceased for which a criminal case bearing Bhabhua P.S. Case No. 57 of 2012 was lodged in which the deceased had given evidence against the said accused/appellant due to which the appellant had an inimical term with her and finally he killed her. P.W.-4, is the doctor who conducted the postmortem upon the dead body of the deceased has found fire arm injury on the body which supports the second part of the occurrence. There was no delay in lodging of the F.I.R. Learned A.P.P. has further submitted that the deceased was lastly seen with the appellant in his captivity and thereafter, the dead body of the victim was found lying in a field situated near the place of occurrence of kidnapping just after some hours of kidnapping for which the informant is an



eye witness. Thus, he contended that the Court below has rightly perceived and assessed the evidence on record. The prosecution has proved the case beyond all reasonable doubt. Hence, the appeal is liable to be dismissed.

13. In order to appreciate the arguments advanced by learned Advocates for both the parties and to determine the correctness of the conclusions recorded in the judgement passed by the Trial Court, it would be necessary to discuss the evidences adduced by the witnesses examined by the prosecution as well as by the defense, the exhibits and other materials on record.

14. PW-1 Rafiq Alam is the brother of the informant. This witness is not the eyewitness to the occurrence rather he got information about the said occurrence from his sister (informant of the present case). Whatever he has deposed about the occurrence it is only by virtue of the disclosure made by his sister i.e. the informant of this case. Moreover, in his cross-examination, this witness has deposed that Bhabhua P.S. Case No. 57 of 2012 also did not happen in front of him. Hence, he is a hearsay witness and his evidence is not reliable.

15. PW-2 Nazma Begum who is the informant of this case. This witness is the eyewitness to the occurrence. She has



deposed in her examination- in chief, that the alleged occurrence took place in the evening at 6 PM fifteen months ago and at that time, she and her daughter namely, Kamar Jehan (deceased) were present in their house. Then the accused Anwar Ansari (appellant) equipped with a gun entered her house with Tara Muni and thereafter, Anwar Ansari (appellant) caught hold of her daughter and started pulling her forcefully she asked him about that behaviour then he threatened to cause firearm injury to her and at that time the co-accused Tara Muni asked the accused Anwar to kill her daughter. Thereafter, she came to the door of her house in weeping condition and saw another person namely, Panne Chauhan standing at the door having a gun who threatened to kill her if she would raise a noise and asked her to return back to her house. She further deposed that she remained in her house in a feared condition during whole night of that day of occurrence and informed her brother namely, Raffique Alam about the said occurrence through mobile phone then her brother said that he was coming from Varanasi and thereafter, just in the morning, she went to Bhabhua police station with her brother and thereafter at 2 PM one police officer took her along with her brother Raffique Alam at the field where her daughter was thrown after she was killed by firearm by the accused



Anwar Ansari and she saw a firearm injury at the left chest of her daughter. She further deposed that previously the accused Anwar Ansari had kidnapped her daughter for which a criminal case was running in the Bhabhua Court and in that case, the accused Anwar Ansari threatened her to make a compromise and he also threatened to kill her if she would not compromise in that case and in that case, the said accused remained under the custody but she did not make any compromise with him due to which he murdered her daughter.

15.1 In cross-examination, she has deposed that the accused Anwar Ansari caused firearm injury to her daughter and the accused persons forcefully took her daughter before her at gunpoint and the accused Anwar caused firearm injury to her daughter at the field. She further stated that she saw the dead body of her daughter in the field of one Sarvesh Singh at 2 PM with the police, a noise was made in the morning about the presence of dead body at the field of Sarvesh Singh but she went to police station in the morning before the rising of sun. She further deposed that when the accused Anwar Ansari entered her house with a gun then the other co-accused Tara Muni also entered with him into her house who was behind the accused Anwar Ansari and at that time she and her daughter sat



together in their house. Thereafter, the accused Anwar Ansari forcefully caught hold her daughter and the co-accused caught hold her who said to the accused Anwar to kill her daughter. She further stated that when she started crying then the accused Anwar Ansari put his gun at her and threatened to kill her if she cried and at that time any of her neighbours did not come near her and when she came out she saw another person namely, Panne Chauhan standing with a gun at her door and at that time her daughter was crying but no one came to save her. She further deposed that she did not know whether her mother was getting a pension or not. She was not aware of any case regarding pension. She is not aware whether the Sarpanch Mukhiya of her village went to jail or not. It is wrong to say that no such incident had taken place as she has mentioned in the F.I.R. and that she had enmity with people in her village, therefore, someone, else has murdered her daughter.

16. P.W.3 Kalamuddin Ansari has deposed in his examination-in-chief that when the incident took place 16 months ago, he was in the village. The deceased Kamar Jahan is the daughter of Najma Begum (informant) and he knows her. He also knows the accused Anwar Ansari. Kamar Jahan's dead body was found in Sarvesh Singh's field. Kamar Jahan and



Anwar Ansari had an illicit relationship. A day before the incident, three or four people had come to the house of Najma Begum (informant) and he came to know that some people had kidnapped Kamar Jahan at night but the next day at 8-9 am, he saw her dead body in Sarvesh Sigh's field.

16.1 In cross-examination, this witness has deposed that his statement was recorded by the police and in his statement, he had stated that Anwar's mother had gone to her maternal home in Hata before the incident as there was a wedding at her maternal home. Anwar had also gone there with his mother. He stated that he had seen three-four men who had come a day before the incident. There was no one from his village among them. Kamar Jahan had an illicit relationship with Anwar for two years. Najma was also aware of this. Najma was unhappy with this. She was unhappy with both Kamar Jahan and Anwar. When he was at the intersection near Najma's house, there was no noise during the period of one hour. He did not tell the police about the illicit relationship between Kamar Jahan and Anwar. He also told them that some people had kidnapped Kamar Jahan at night. The villagers have broken relationship with Najma's brother Rafiq.

17. P.W.4 Dr. Rishikant Pandey is the doctor who



conducted a postmortem upon the deceased. He has stated in his evidence that he was posted at Sadar Hospital Bhabua as a Medical Officer and, on that day, he conducted an autopsy on the dead body of Kamarjahan, aged about 20 years and given the description of the observation made during the autopsy which is as follows :-

External Appearance : *Young age dark complexion, eyes semi open, mouth open, teeth visible, tongue protruding right wrist fully flexed, right wrist fully extended, rigor mortis fully developed in all the four limbs. Penetration wound about 2 1/2" right to the left nipple with i.e. wound of entry. Exit wound just below the left scapula with margin everted. Linea Nigra present over lower part of the abdomen uterine fund height about eight finger above the umbilicus. She was pregnant.*

External Examination :- *penetrating wound 2 1/2" right to the left nipple with margin inverted and charging around it. Exit wound just below the left scapula with margin everted. Rest finding as mentioned in external appearance. Both entrance and exit wound are smeared with dry blood*



clot.

Opinion :- (i) *Above injury is ante mortem in nature caused by fire arm with very closed distance. (ii) Cause of death is excessive hemorrhage and shock due to heart punctured.*

17.1 In cross-examination, this witness has deposed that the time lapsed between the death and autopsy is 24 hours. The baby in the deceased's womb was full. In terms of meaning it was fully developed. The age of the deceased could be 2-4 years more. Semi-digested food was found in the stomach of the deceased and in the normal course, a food takes six hours for complete digestion. The victim was murdered by one shot of a gun and the same was caused from very close range and at her chest a fire-arm injury was found. Such type of injury is possible when one suddenly attacks one from a nearby place or opens a firearm at someone having physical control over him or her.

18. P.W.5 Rehana Bibi has deposed in examination-in-chief that Kamar Jahan having an affair with Anwar Ansari and regarding that matter, Najma Begum had lodged a criminal case against Anwar Ansari levelling accusation of kidnapping of her daughter. In that case, Anwar Ansari was jailed. After being



released from jail, Anwar and Kamar Jahan lived together due to which Kamar Jahan became pregnant.

18.1 In her cross-examination, this witness has deposed that Kamar Jahan and Anwar Ansari were friends and they were in a love affair for 2-4 years. The mother of Kamar Jahan did not like this at all. She stated before the police that on the day of the incident, Taramuni (mother of the appellant) had gone to her maternal home a week before the incident and was not in the village. On the night of the incident, 3-4 unknown persons had come to Nazma's house and stayed all night. They were not from her village. She does not know when they left. On the day of the incident, she did not hear any noise till she was awake. If someone from Najma's house or her house speaks loudly, it can be heard in the other's house. Similarly, any conversation in the street can also be heard. She came to know about the incident at about 8-9 in the morning when there was a noise in the village about a dead body in the field. She came to know that it was the dead body of Kamar Jahan. Kamar Jahan's mother was upset with both of them due to their love affairs.

19. P.W.6 Javed Ansari has deposed in his examination in chief that Najma Begum had told him about the kidnapping of her daughter by Anwar Ansari at night. She also



told him that she screamed but no one came. Anwar Ansari and Kamarjahan had gone somewhere together earlier also for which a case for kidnapping was lodged by Nazma in which Anwar Ansari was jailed and after being released from jail, they lived together due to which Kamar Jahan became pregnant. He got information that Kamar Jahan's dead body was found in the paddy field in the morning on the day of the incident.

19.1 In his cross-examination, he deposed that Najma came to Bhabhua to lodge an FIR in his car. He had no idea about the said incident before Najma sat in the car. Kamar Jahan and Anwar Ansari both lived together and Najma did not like this and she told them that living together would be expensive for them. At the time of death, Kamar Jahan was pregnant. The child in her womb was Anwar's which was known to all. The case in which Anwar Ansari was jailed, both Kamar Jahan and Anwar Ansari were in a love affair. He also got information that Kamar Jahan used to visit the jail to meet Anwar Ansari. He stated before the police that on the night of the incident, 3-4 unknown persons stayed at Najma's place, all of whom were strangers, none were from the village. Anwar Ansari was not in the village on the day of the incident but had gone to his maternal house situated at Hata P.S.-Chenari along with his



mother.

20. P.W.7 Shahanwaz Rai was declared hostile.

21. P.W.8 Mukesh Kumar is the Investigating Officer of Bhabhua Police Station. During the examination-in-chief, he deposed that on the basis of the written application of the informant, he took responsibility of the investigation and started the investigation. Recorded the statement of the informant again and investigated the crime scene. He took the statement of witness Rafiq Alam who supported the incident fully and thereafter, the statement of witness Shahnawaz Rai was taken who said that when Najma Begum made noise, he reached her house and Najma was crying. On being asked, she said that Anwar Ansari had kidnapped her daughter Kamar Jahjan at gunpoint and taken her away to kill her. After that, he recorded the statements of witnesses Rehana, Kalmuddin Ansari, Javed Ansari who supported the incident. Thereafter, Bhabhua Police Station Case No. 517 of 2012 dated 03/02/2012, under Section 366 of the I.P.C. was perused in which informant Najma Begum gave a written application that on 05/02/2012 her daughter Kamar Jahan has been kidnapped by Anwar Ansari with the intention of marriage, in which Kamar Jahan was recovered with Anwar Ansari. Thereafter her statement was recorded



under Section 164 of the Cr. P.C. in which Kamar Jahan stated that on 05/02/2012, she had come to Bhabhua market for shopping and Anwar Ansari asked her to sit in the Marshal (vehicle) and said that he would drop her home, then she sat with him in the Marshal (vehicle) and thereafter, he took her to Mughalsarai from where she was taken to Bombay. There she stayed with Anwar for about 15 days and for that, a case was lodged by her mother. In this case, Anwar Ansari was arrested and sent to judicial custody on 22/02/2012.

21.1 In his cross-examination, this witness has deposed that the time of starting of the investigation on 07/01/2014 is not mentioned in the diary. He was given the charge of investigation on 07/01/2014 at around 7 AM. The time of recording the informant's statement is not mentioned in the diary. The time of leaving for the place of incident with the armed forces is not mentioned and the time of inspecting the informant's house is not mentioned. The brother of the informant Rafiq had come from Banaras on the morning of 7th. The statements of the people living in the vicinity of the informant's house were taken. Apart from the informant, no witness has said that they saw Anwar committing the crime. He further deposed that during the course of the investigation, a



supervisory note was received wherein it is mentioned that the deceased Kamar Jahan and Anwar loved each other which the informant opposed and due to her opposition, they did not get married. It is also mentioned in it that Kamar Jahan was pregnant and the child growing in her womb was Anwar's. The informant is a woman of bad character who wanted her daughter to do illegal business which Anwar Ansari opposed. It is also mentioned that there was a quarrel between Kamar Jahan and Anwar 2-3 days before the incident. On the day of the incident, three-four unknown persons came to the informant's house in the evening. The mother of the appellant has been falsely implicated as she was at her maternal home on the day of the incident. An attempt was also made by the I.O. to trace 3-4 unknown persons and take action for their arrest, but these unknown persons could not be traced. The witnesses have not mentioned the name of Anwar among them. He further deposed that it is clear from the postmortem report, supervisor note and witnesses Rehana Bibi, Kalamuddin Ansari, and Javed Ansari that the deceased Kamar Jahan was pregnant and it is also clear that the child growing in the womb of the deceased was Anwar's. Rehana Bibi said in her statement that both of them had gone together and Anwar did not kidnap her. Both of them



were in love. Nazma Begum had also lodged a case in which Anwar went to jail. After being released from jail, Anwar and Kamar Jahan lived together and wanted to get married. Witnesses Kalamuddin and Jave have also confirmed that both of them were living together. This witness has further deposed that Rafiq Alam has not given such a statement that accused Tara Muni that kill her and did not spare her. Nazama has also said that after the incident when she came out of the door, Panne Chauhan was standing outside the door with a gun and said go inside the house and do not make a noise or else you will also be killed and Panne Chauhan was the accomplice of Anwar Ansari. This witness had not said that when he went to Mauza Datiyaon with the police force, there was a noise about the murder of Kamarjahan and the dead body was lying thrown in the field of Sarvesh Singh. The deceased had a bullet wound on the left side of her chest and he identified the dead body.

22. In this case, there are total eight (8) prosecution witnesses and out of which P.W.7 Shahanwaz Rai has declared hostile by the prosecution and rest of the P.Ws. 1, 3, 5 and 6 are not the eye -witness and, as per prosecution, the so-called eye-witness in this case is the P.W.-2 Najma Begum (the informant of this case).



23. Upon analysis of the evidence of prosecution witnesses, this Court finds sharp contradictions between the evidence of the informant and other witnesses. P.W.1, the brother of the informant who is the hearsay witness, and P.W.2 who is the informant have supported the allegation of kidnapping of the victim but the rest of the witnesses have not supported the story of kidnapping. There is no eye-witness of murder in the present case. On the point of kidnapping, it has been deposed by P.W.-2 that the appellant with his mother and another person participated in the kidnapping of her daughter. The appellant and his mother entered the house and one person was standing outside which she has narrated in paragraph 1 of her examination-in-chief and paragraph -7 of cross-examination, but the other Prosecution Witnesses have not supported this version of kidnapping rather they have deposed otherwise. P.Ws. 3 and 5 who are co-villager and neighbour of the informant respectively in paragraph 6 of their deposition, P.W. 6 who is neighbor of the informant in paragraph 12, and P.W. -8 (I.O. of the case) in paragraph 11 have specifically deposed that in the evening on the alleged date of occurrence, three-four unknown persons had visited the house of the informant and stayed for the whole night, they have specifically



mentioned that none of them is their villager. More specifically, P.W.-5, namely, Rehana Bibi in her chief examination at paragraph 7 said that three-four unknown persons came in the evening of the incident at the house of the informant and they stayed there in the night, but she did not hear any noise from the house of the informant on the said day of occurrence till she went sleeping. She usually sleeps till 9 PM.

24. It further appears to this Court that the informant and the appellant have inimical terms as there was a love affair and illicit relationship between Anwar Ansari (appellant) and the deceased. Some of the prosecution witnesses have said earlier that the deceased had fled away with Anwar Ansari to contract her marriage with him and for this, a criminal case was lodged by the informant against Anwar Ansari for kidnapping her daughter. The prosecution witnesses have also said that the deceased used to visit the jail to meet Anwar Ansari. After being released from jail, both started living together as husband (appellant) and wife (deceased), and owing to this relationship, the deceased became pregnant also. The story of pregnancy proved by post-mortem report. The informant was not happy with this relationship. This fact has been supported by P.W.-3 in paragraph 8, P.W.-5 in paragraph 9 and P.W.6 in paragraph 9,



P.W.8 in paragraph 11 during the trial. In the post-mortem examination, the deceased was found pregnant at the time of her death and the fact is also corroborated by her postmortem report (Exhibit-3).

25. In the evidence P.W.5, Rehana Bini and P.W. 8, the I.O. it has come that on the day of occurrence the mother of the appellant namely Tara Muni was not present at her village as she had gone to another village, Hatta, to attend a marriage function of the son of her brother, while in the evidence of P.W.3 and P.W.-6 in paragraphs 4 and 13, it has come that the appellant and his mother Tara Muni both had gone other village some days before the alleged occurrence was committed to attend a marriage function. In this regard, the brother of the mother of the informant was also examined in defence who fully supported the said defence and produced the marriage invitation card of the said marriage.

26. The evidence of the Investigating Officer has been taken as P.W.-8 and from his evidence it appears that in the course of the statement of the people living in the vicinity of the informant's house, no witness has said that they saw Anwar Ansari committing the said crime, and during course of the investigation, a fact has come that the deceased Kamar Jahan



and Anwar Ansari loved each other, which the informant opposed and due to this relationship, Kamar Jahan became pregnant and the child growing in her womb was Anwar's. The informant is a woman of bad character who wanted her daughter to do illegal business which Anwar Ansari opposed. According to his statement on the day of the incident, three-four unknown persons came to the informant's house in the evening and an attempt was made to trace these unknown persons, but they could not be traced.

27. Upon analysis of the evidences of prosecution witnesses, defense witnesses, exhibits and other materials available on record, it reveals that the present case has been filed upon the written complaint of P.W.-2 on 07/11/2014 at about 9.30 AM whereas the date of occurrence was of 06/11/2024 at 6.00 P.M. In spite of the fact that the distance between the Police Station and the place of occurrence is just 5 KM, the police had reached at the place of occurrence and prepared an inquest report at about 2.00 PM at the day time of 07/11/2014. Other prosecution witnesses, they are villagers had already received information in the morning about 8-9 A.M. that the dead body of the daughter of the informant was lying in the field of Sarvesh Singh (villager). The natural course of



action is that when a mother's daughter is kidnapped and she hears about a dead body, the first thing she does is go to see the body.

28. Other point on which this Court is surprised that in the written report, the informant has not disclosed about the age of the deceased but in her deposition before the Court, the said informant P.W.2 had disclosed the age of the victim as 14 years only, whereas the team of doctors has ascertained the age of the victim as 20 years, which has been specifically deposed in paragraph 1 of the deposition of P.W.4, the doctor. Neither the informant (P.W.2) nor his brother (P.W.-1) had disclosed this fact that at the time of death of the victim, she was pregnant and the baby in her womb was fully developed, but this fact has been revealed in the post-mortem report that a full term baby was found in the womb of the deceased in paragraph 8 of the doctor's deposition who is P.W.4, a sharp contradiction also exists on other fact, that has been revealed by P.W.2, the informant in paragraph 3 of her deposition that the appellant has earlier kidnapped her daughter for which a criminal case was lodged which is pending before the Bhabhua Court in which the appellant was putting pressure upon the informant for compromise and continuously threatening that if compromise



shall not be done then, he will kill her daughter but except P.Ws. 1 and 2, other witnesses who are neighbour i.e. P.Ws. 3, 5 and 6 have disclosed that there was close intimacy due to love between the appellant and the deceased since last two years. Physical relation was also discussed between them. They used to reside with each other, due to which the deceased became pregnant. Both left their house with their consent, but the informant was not ready and happy with the relationship between the appellant and the deceased, due to which she lodged a criminal case against the appellant for kidnapping but in the said case statement under Section 164 of the Cr. P.C. of the deceased took place which is Exhibit- 2/2 of the present case in which the deceased had not made any allegation against the appellant rather, by her statement under Section 164 Cr. P.C. it transpires that she was with her full agreement and consent went with the appellant. But subsequently, returned back to her mother after getting information about the lodging of the case of kidnapping against the appellant. This fact has also come in paragraph 4 of the deposition of P.W. 8, the Investigating Officer. Another aspect that creates extreme doubt to prosecution case is with regard to the relation between the deceased and the appellant as disclosed in paragraphs 11 and 12



of the same deposition, by which it has come that the appellant and the deceased were in love with each other, this was always opposed by the informant. It has also come that the deceased was pregnant by the appellant.

29. Another aspect that has come at the mouth of the prosecution witnesses particularly P.Ws.3, 5 and 6 that on the day of the occurrence on which the alleged kidnapping took place, there are three-four unknown persons visited, the house of the informant. They visited at about 6 PM and stayed in the night but when they returned, it was not known. The same fact has also been deposed by the Investigating Officer that three-four unknown persons had visited on the alleged date of kidnapping and they stayed at the house of the informant, but in spite of the fact that the Investigating Officer has received this information at the mouth of the different witnesses, had not identified the said unknown persons. In the post-mortem report, it has come that at the time of death, the deceased was aged about 20 years, she was pregnant, and undigested food was found in her stomach which was consumed before five hours. It has also come from the mouth of the prosecution witnesses, that the appellant Anwar Ansari and her mother Taramuni are residents of the same village. Therefore, every prosecution



witness is known to them and at least three witnesses have disclosed that the appellant and her mother went to attend the marriage of their relative outside village on the date of occurrence. In this regard, defense witness has also adduced evidence and exhibited a marriage card.

30. Upon above said analysis, particularly when the co-villager who are prosecution witnesses reveal that the appellant Anwar Ansari and her mother were not identified by any individual witness rather prosecution witnesses have disclosed that 3-4 unknown persons had visited in the evening of the said date of occurrence at the house of the informant and they stayed in the night and on the very next day, the dead body of the deceased was found in the field. Upon analysis of the evidence, we found that there is a breakage of chain of events. The contradictory evidences creates doubt in the mind of the Court.

31. In result, we are of the view that the prosecution has failed to prove the case against the appellant beyond a reasonable doubt, particularly, because there is contradictory evidences available on record. We are of the firm view that the trial Court has committed grave error while passing the impugned judgement of conviction and order of sentence



against the present appellant. Hence, the same are required to be quashed and set aside.

32. Accordingly, the judgment of conviction dated 19.06.2018 and order of sentence dated 20.06.2018 passed by Sessions Judge-Kaimur, Bhabhua in Sessions Trial No. 349 of 2015, arising out of Bhabua P.S. Case No. 489 of 2014 are quashed and set aside.

33. Since the appellant in jail, he is directed to be released from custody forthwith, if his presence is not required in any other case.

34. Cr. Appeal (D.B.) No. 1017 of 2018 stands allowed.

(Vipul M. Pancholi, J)

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NA
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