

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1120 of 2016**

Arising Out of PS. Case No.-107 Year-2014 Thana- AMARPUR District- Banka

Pappu Yadav S/o Sri Yogendra Yadav Resident of Village - Guthiyara, Police
Station - Fullidumar, District - Banka.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Ajay Mukherjee, Adv
Mr. Sunil Prasad, Adv

For the Respondent/s : Mr.Sri Ganesh Prasad Jaiswal, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 19-08-2024

1. Heard Mr. Ajay Mukharjee and Mr. Sunil Prasad, the learned Advocates for the appellant and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State.

2. The appellant has been convicted for the offences under Sections 302 and 201 of the Indian



Penal Code vide judgment dated 26.08.2016 passed by the learned 1st Additional Sessions Judge, Banka in Sessions Trial No. 519/2014/Trial No. 522/2016 arising out of Amarpur P.S. Case No. 107/2014, G.R. No. 708/2014. By order dated 01.09.2016, he has been sentenced to undergo R.I. for life, to pay a fine of Rs. 5,000/- and in default of payment of fine, to further suffer S.I. for three months for the offence under Section 302 IPC and R.I. for seven years along with a fine of Rs. 5,000/- and in default of payment of fine, to further suffer S.I. for three months for the offence under Section 201 IPC.

3. In an unfortunate incident, young siblings of the age of five years and two years respectively, were found dead in a well.

4. The allegation has been raised by the mother of the children(deceased) that her husband/appellant (father of the deceased children) had killed both of them and had thrown them in the well to conceal the offence. The mother/Lukho Devi @ Lukha Devi (P.W-



4) had lodged the fardbeyan on 28.04.2014 at 6:00 pm near the well, from where the dead bodies were recovered, that in the previous night i.e. on 27.04.2014, the appellant had demanded Rs. 60,000/ (Rupees sixty thousand) from her. When she expressed her inability to ask her people to arrange for the money, she was assaulted by her husband. As a result of that, she became unconscious. When she regained her senses, she did not find either her husband or her children. On 28.04.2014, she heard a rumor in the village that the dead bodies of two children have been found in a well in village Kasraha, approximately three kilometers away from her home. The dead bodies were of her son and daughter. She, therefore, suspected that her husband /appellant/ Pappu Yadav had killed the children and thrown their dead bodies in the well.

5. On the basis of the aforementioned fardbeyan statement of P.W.-5 filed its case *vide* Amarpur P.S.



Case No. 107 of 2014 dated 28.04.2014 was registered for investigation against the appellant for the offences under Section 302 and 201 of the Indian Penal Code.

6. The postmortem examination clearly depicts that both the deaths were caused because of hemorrhage and shock as a result of head injuries. Both the deceased were bleeding from the nose and there were concussions in the brain. The postmortem report further revealed that both the deceased died of the head injury and not out of asphyxia. This opinion of the doctor /Dr. Ajaj Masih/P.W.-6 confirms that the deceased/children were assaulted and thereafter thrown in the well.

7. Who did that is the question which the Trial Court was beset with. The mother of the deceased i.e the wife of the appellant as has been noted, suspected him to have committed the murders.

8. It has come during the evidence that the deceased were the legitimate children of the



appellant and Lukho @ Lukha Devi. The question which bothers us is the propelling force which would have goaded a father to kill his two children.

9. Out of the wedlock of the appellant and Lukha Devi, three children were born. There is no information on record about the third child. For the refusal of the mother of the deceased to arrange for sixty thousand rupees for her husband, it is hardly probable that a father would kill his own children.

10. During the Trial, six witnesses were examined including the doctor but the IO has not been examined. This poses a difficulty in the very factum of the deceased children being taken out from the well being proved at all.

11. Yogendra Yadav (P.W-1), who is the grandfather of the children had no idea about the appellant having killed them. He learnt about the occurrence only after he was told by the villagers that Lukho @ Lukha Devi (P.W.-5) had lodged a case against his son. This statement makes it very



clear the P.W-5/ Lakho Devi, had not been residing in her matrimonial home when the occurrence had taken place.

12. Uday Yadav (P.W.-2) did not support the prosecution case and was declared hostile.

13. Nunulal Yadav (P.W.-3), the uncle of the appellant claims to have come to his village only after two months of the occurrence and therefore, had nothing specific to speak before the Trial Court.

14. The most important witness, according to us, is Bablu Yadav (P.W.-4), who is brother of the informant and maternal uncle of the deceased. He has confirmed the fact that villagers told him that the dead bodies of the children were taken out from the well. He was aware that his sister had lodged a case against the appellant. However, in his cross-examination, he has disclosed that his sister had not told anything about the occurrence specially about the appellant having killed his children. He had reached the house of the informant only after an



hour of the death of both the children. If the accusation by P.W.5 is correct, then perhaps she would have disclosed it to her own brother (P.W.4). Not having done that, it appears that since the relationship of P.W.-5 with the appellant is strained and she had been residing in her parental home, she indulged in a wild suspicion about her husband.

15. At the Trial, however, P.W.-5 has supported the case in its entirety. She has spoken about the ill-treatment meted out to her by her husband. She has repeated the same story of her having been assaulted by her husband which made her unconscious. Thereafter, the appellant and her children were not to be found. Only later i.e on the next day, she learnt about the two dead bodies of children lying in a well, three kilometers away from her home. She, therefore, suspected that her husband/appellant must have killed both her son and daughter.

16. For what reason the murders were executed



remains unknown.

17. Was it revenge against the mother of the deceased?

18. Had the appellant gone completely berserk when his wife had refused to arrange for sixty thousand rupees?

19. Where was the place where the children were subjected to assault?

20. Who took them to a well in a different village about three kilometers away?

21. If the accusation were correct, there would have been witnesses to say that the appellant went with his two children.

22. Nobody has supported the occurrence, even remotely, except P.W.-5. That apart, what is even more noticeable is that the children were not to be found in the night of 27.04.2014. P.W.-5 did not remain unconscious for a long time. Did she not look for her son and daughter only in the next evening? Did she hear a rumor about the dead bodies lying in



the well ?. All this causes serious doubts about the accusation made by her against her husband.

23. In any view of the matter, if P.W.-5 suspected the hands of her husband in the killings, it was only a guess-work. The circumstance of P.W.-5 being assaulted by the appellant, rendering her unconscious is not good enough ground to jump to the conclusion that thereafter the appellant had picked up his son and daughter, killed them and threw them in the well. There remains many a gaps between the incident of assault to P.W.-5 and the recovery of the dead bodies.

24. Who would prove the factum of recovery of the dead bodies from the well except the Investigating Officer? None of the witnesses examined at the trial have talked about their presence when the dead bodies were recovered.

25. Thus, the only evidence against the appellant is the assumption of his wife that he had killed his own children.



26. It was one of the most tragic events but then, merely because the appellant had fought with the mother of the children some times ago, that would be no ground to suspect that he had killed them. There is no earlier reported behaviour of the appellant of assaulting the children on record.
27. We can only assess from the evidence on record that the wife (P.W.-5) had strained relationship with her husband/ appellant.
28. That speaks for the reason for P.W.-5 to suspect him.
29. For all practical purposes, therefore, we have not been able to locate any evidence against the appellant of having killed the children.
30. Suspicion howsoever strong, cannot take the place of proof. Suspicion is a sea without any shore and any person who undertakes a voyage in that sea is perforce rendered without a radar and a compass. The prosecution case can rest on circumstantial evidence. The law with regard to



conviction on the basis of circumstantial evidence has very well been crystallized in the judgment of Supreme Court in Sharad Birdhichand Sarda v. state of Maharashtra; (1984) 4 SCC 116, wherein it was held as follows:-

"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 [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . 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 [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :*

"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."

153. *A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807:



SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. *These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence".*

31. It cannot be said with certainty that the only objective conclusion from the set of facts available on record is that the appellant had killed his children.

32. In such an event, holding the appellant liable



for the murders of the children is highly unwarranted.

33. We, therefore, do not endorse the opinion of the Trial Court holding the appellant guilty of the offence.

34. The prosecution has failed to bring home the charges against the appellant.

35. Thus, we set aside the judgment of conviction and order of sentence passed by the Trial Court and set the appellant free.

36. The appellant is acquitted of all the charges.

37. Since, the appellant is in custody since 2014, he is directed to be released forthwith from jail unless his detention is required in any other case

38. The appeal stands allowed.

39. The Interlocutory application/s, if any, also stands disposed of.

40. Let a copy of this judgment be dispatched to the Superintendent of concerned jail for record and compliance.



41. Let the records of this appeal be also returned
to the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

sunilkumar/-

AFR/NAFR	NAFR
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