

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.915 of 2022

Arising Out of PS. Case No.-164 Year-2015 Thana- DEHRI TOWN District- Rohtas

Manoj Kumar Mishra @ Manoj Mishra @ Manoj Mishr S/O Late Rajbansh Mishra @ Raj Vansh Mishr R/O Village- Nawadih, P.S- Indrapuri, District- Rohtas

... .. Appellant

Versus

1. The State of Bihar
2. Anirudh Prasad @ Anirudh Prajapati S/O Jagarnath Prajapati R/O Village- Nawadih, Post and P.S- Indrapuri, District- Rohtas
3. Shanti Devi W/O Sudama Prajapati @ Sudama Prasad R/O Village- Nawadih, Post and P.S- Indrapuri, District- Rohtas
4. Indrasani Devi W/O Jagannath Prajapati R/O Village- Nawadih, Post and P.S- Indrapuri, District- Rohtas
5. Malti Devi W/O Anirudh Prasad @ Anirudh Prajapati R/O Village- Nawadih, Post and P.S- Indrapuri, District- Rohtas
6. Sonam Kumari D/O Kripa Shankar Prajapati R/O Village- Nawadih, Post and P.S- Indrapuri, District- Rohtas

... .. Respondents

Appearance :

For the Appellant	:	Mr.Surendra Kumar Choubey, Advocate
For the State	:	Mr.Binod Bihari Singh, Addl. PP
For the resp nos. 2 to 6	:	Mr.Vinod Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 06-03-2024

Heard learned counsel for the appellant, learned counsel for respondent nos. 2 to 6 and Mr. Binod Bihari Singh learned Additional Public Prosecutor for the State.

2. Informant of the case is in appeal before us. He is aggrieved by and dissatisfied with the judgment dated 24.11.2020 passed by learned 15th Additional District & Sessions Judge,



Sasaram, Rohtas in Sessions Trial No. 488 of 2015 arising out of Dehri (Indrapuri) PS Case No. 164 of 2015, in so far as by the judgment under appeal, learned trial court has acquitted accused nos. 2 to 6 (respondent nos. 2 to 6) from the charges under Sections 302 and 201 of the Indian Penal Code (in short 'IPC'). To complete the records, it is worth-mentioning that altogether eight accused persons were chargesheeted in this case and investigation against one accused namely Abhimanyu Prajapati was kept pending. Later on, the case of accused Vinita Kumari and Abhimanyu Prajapati were sent to the Juvenile Justice Board, Sasaram considering them juvenile under the Juvenile Justice (Care & Protection of Children) Act. Out of remaining seven accused who were chargesheeted under Section 302 and 201/34 IPC, one accused namely Jagannath Prajapati died during pendency of the case, hence, the proceeding against him was dropped vide order dated 12.03.2020. Thus, lastly six accused faced trial in this case. On completion of trial, the learned trial court has been pleased to convict the accused Sudama Prajapati whereas, respondent nos. 2 to 6 in this case have been acquitted from the charges.

3. Learned counsel for the appellant has assailed the impugned judgment on the ground that the learned trial court has



failed to appreciate the evidences of the prosecution which were available on the record.

4. The prosecution case as disclosed in the written report submitted by Manoj Kumar Mishra, father of the deceased who has been examined as PW-9 in the trial states that on 09.04.2015, in the night at about 11.00 pm, three persons came at his house whom he identified as Sudama Prajapati, Abhimanyu Prajapati and one unknown co-accused who called his son Dhiraj Kumar Mishra by his name whereafter his son came out of his house and they took him with them. It is alleged that when his son did not return and the aforesaid persons were not saying anything about his son, the informant apprehended that some untoward incident might have occurred.

5. It is evident from the written report that the son of the informant had gone missing since 09.04.2015 at 11.00 p.m. (night). The written report was submitted in the Police Station on 10.04.2015, however, the formal FIR (exhibit-7) would show that the information was made available at the Police Station on 11.04.2015 at 11.00 hours and the FIR was also registered simultaneously giving rise to Dehri (Indrapuri) PS Case No. 164 of 2015.



6. In the written report (exhibit-3 marked with objection), the informant (PW-9) alleged that in the previous night at about 11.00 p.m. Sudama Prajapati son of Jagannath Prajapati and Abhimanyu Prajapati son of Sudama Prajapati together with one person whom the informant could not identify had come to his house and called his son Dhiraj Kumar Mishra by his name. When Dhiraj Kumar Mishra came out they took him with them whereafter his son had not returned home. On query made from them, those persons were not saying anything, therefore, the informant apprehended some untoward incident.

7. Upon investigation of the case, the police submitted chargesheet against eight accused persons showing the investigation pending against accused Abhimanyu Prajapati. Cognizance was taken under Section 302 and 201/34 IPC on 21.07.2015, the records were committed to the Court of Sessions. Since the accused Vinita Kumari and Abhimanyu Prajapati were found juvenile, their cases were separated and sent to the Juvenile Justice Board, Sasaram. As stated above, the charges were framed against seven accused persons out of them one died. The rest of the six accused denied the charges and claimed to be tried.

8. In course of trial, the prosecution examined as many as thirteen witnesses and some documents such as, postmortem



report (exhibit-1), injury report of accused Sudama Prajapati (exhibit-2), written report of the informant (exhibit-3), confessional statement of co-accused Sudama Prajapati (exhibit-4), inquest report (exhibit-5), signatures of witnesses Santosh Mishra and Kamta Mishra over the inquest report (exhibit-5/A and exhibit-5/B), seizure list (exhibit-6) and the signatures of the witnesses Sanjay Singh and Ram Chandra Mishra over the seizure list (exhibit-6/A and exhibit-6/B), formal FIR (exhibit-7) were marked. Some material exhibits have also been produced on behalf of prosecution. Material exhibit-(I) is white rope, I/1 is red rope, exhibit-II is clothes of red and blue colour.

9. The defence examined three witnesses namely, Krishna Singh DW-1, Ram Chandra Mishra DW-2 and Ram Pukar Yadav DW-3. The defence also exhibited two documents viz. FIR (exhibit-A) and report of B.D.O (exhibit-B).

10. On examination of the prosecution evidences, the learned trial court found that death of the deceased Dhiraj Kumar Mishra has not been denied by anyone. All the evidences have disclosed the fact of the death of deceased, the inquest report (exhibit-5) and the postmortem report (exhibit-1) also proved this fact. The postmortem report and the deposition of the medical officer (PW-5) revealed that the cause of death of Dhiraj Kumar



Mishra is asphyxia by strangulation. The learned trial court also noticed from the statements of the witnesses as well as from the inquest report that the dead body of the deceased was found from the water of canal, therefore, it has been concluded that Dhiraj Kumar Mishra did not die naturally and that his death was result of offence committed against him. So far as this aspect of the matter is concerned, no challenge has been thrown to this finding and we do not find any infirmity much less perversity in the finding of the learned trial court.

11. While examining the evidences produced on behalf of prosecution to find out as to who among the accused persons has committed the murder of the deceased Dhiraj Kumar Mishra, learned trial court has noticed that in their depositions PW-1, PW-2, PW-3, PW-4 and PW-7 have deposed during their examination-in-chief that accused Sudama Prajapati, Abhimanyu Prajapati and Aniruddha Prajapati came at the door of the deceased on 09.04.2015 at about 11.00 pm. and called him by his name and took him with them whereafter Dhiraj Kumar Mishra did not return. Having said so, the learned trial court has found that in his written report which was submitted to the police one day after the occurrence, the informant (PW-9) had taken name of only two accused persons who were Sudama Prajapati and his son



Abhimanyu Prajapati and had further stated that there was one other person who could not be identified by him. The learned trial court therefore, observed that there is suspicion on the point of inclusion of name of third accused Aniruddha Prajapati who had not been named by the informant himself in the written report leading to lodging of the FIR.

12. We have found from the depositions of PW-1, PW-2, PW-3, PW-4 and PW-7 that they have stated about the presence of Aniruddha Prajapati but these witnesses were either not examined by the IO immediately after lodging of the FIR or were examined at a belated stage or were not at all examined.

13. PW-1 has stated in his cross-examination that he was not aware as to whether the police had arrived in the village on 10th April, 2015. He was aware that police had arrived on 11th April, 2015 at 4.00 pm (evening) but he was not aware that police had gone to the house of Dhiraj Kumar Mishra and whether the police was inquiring about the occurrence from the people or not.

14. PW-2 has also stated in paragraph 18 of his deposition that Darogaji had not come to him, he had met Darogaji on 11.04.2015 at the canal where the dead body was found but Darogaji had not recorded his statement. He could not say that whose statements were recorded by Darogaji.



15. PW-3 Umrawati Kunwar who is the grand-mother of the deceased. She has claimed that after recovery of the dead body, Darogaji had recorded her statement at her house but the Daroga who has been examined in course of trial as PW-10 has stated in paragraph '25' that he had not recorded the statement of the witness Umrawati Kunwar.

16. Regarding PW-4, the IO has stated in paragraph '21' of his cross-examination that this witness had not stated to him about Anirudhha Prajapati taking away Dhiraj Kumar Mishra. He had not recorded the time of recording of the statement of PW-4. Nilam Devi (PW-7) has also named Aniruddha Prajapati in her examination-in-chief. She is mother of the deceased and wife of PW-9. She has stated in paragraph '15' of her evidence that Darogaji had come to her house on 10th April, 2015 at 8.00 pm and had recorded her statement. She got information regarding recovery of the dead body of her son on 11.04.2015 at 1.30 pm from the husband of *Sarpanch* Rekha Devi. At that time her husband and Dewar were present in the house. They went outside the house, but she had not gone. Regarding this witness, the IO has stated in paragraph '19' of his evidence that Nilam Devi had not made any statement before him that she had identified Abhimanyu



Prajapati, Aniruddha Prajapati and Sudama Prajapati in the light of bulb.

17. From a threadbare reading of the evidences available on record, this Court finds that as regards complicity of Aniruddha Prajapati in the matter of taking away of the victim boy on 09.04.2015 at 11.00 pm, the prosecution witnesses have improved upon in course of trial. They have been contradicted by the IO (PW-10). The presence of Aniruddha Prajapati is, therefore, not proved beyond all reasonable doubts.

18. We further find from the discussions made in the judgment of the learned trial court and the materials available on record that the learned trial court has rightly appreciated the evidence of IO (PW-10) and held that the evidence of the IO is based on his investigation which in turn is based on the confessional statement of the accused Sudama Prajapati.

19. The learned trial court is correct in holding that though the entire confessional statement before the police would not be admissible in evidence but the part of the confessional statement made before the police leading to recovery of the dead body shall be admissible in evidence as the same would be protected under Section 27 of the Evidence Act.



20. We find from the discussions made in the judgment of the learned trial court that the learned trial court has discussed the circumstances which started from the last seen theory in which accused Sudama Prajapati and Abhimanyu Prajapati were seen with the deceased Dhiraj Kumar Mishra on 09.04.2015 at about 11.00 pm till recovery of the dead body of Dhiraj Kumar Mishra from the canal. The learned trial court has upon appreciation of the prosecution evidences rightly concluded that the chain of circumstantial evidence is not complete against respondent nos. 2 to 6. We would, however, hasten to add here that our agreeing with the view of the learned trial court as regards the findings recorded in respect of respondent nos. 2 to 6 shall not cause any prejudice to the case of Sudama Prjapati.

21. Having said so, the learned trial court has found and in our opinion rightly so that so far as involvement of other accused persons are concerned, except that their names have been brought in the case on the basis of confessional statement of the accused Sudama Prajapati, there is no other material to connect them with the killing of the deceased Dhiraj Kumar Mishra.

22. We find that the learned trial court has taken a view that in this case the confessional statement has been made before the police, therefore, its part not leading to recovery shall have no



evidentiary value against accused making it and it shall also not have any evidentiary value against the co-accused persons.

23. We are of the considered opinion that the entire confessional statement of Sudama Prajapati (exhibit-4) cannot be taken as admissible in evidence and the learned trial court has not committed any error in its appreciation. It is only that part of the confessional statement which would be covered under Section 27 of the Evidence Act shall be admissible in evidence. In the entire prosecution evidence, no evidence has come on the record against respondent nos. 2 to 6, therefore, this Court finds no error in the impugned judgment. No interference is required.

24. This appeal has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(G. Anupama Chakravarthy, J)

vinita/sushma-

AFR/NAFR	
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