

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.302 of 2022

Arising Out of PS. Case No.-163 Year-2016 Thana- BHAWANIPUR District- Purnia

TULSI MANDAL Son of Ramphal Mandal Resident of Village - Math Tola
Askatiya, P.S.- Bhawanipur, Distt.- Purnea.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 942 of 2022

Arising Out of PS. Case No.-163 Year-2016 Thana- BHAWANIPUR District- Purnia

SITARA KHATUN WIFE OF MD. NIHAL R/O VILLAGE- BHURKUNDA,
P.S.- BHAWANIPUR, DISTRICT- PURNEA

... .. Appellant/s

Versus

THE STATE OF BIHAR BIHAR

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 302 of 2022)

For the Appellant/s : Mr. N.K. Agarwal, Sr. Adv.

Mr.Dr. Bidhu Ranjan, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

(In CRIMINAL APPEAL (DB) No. 942 of 2022)

For the Appellant/s : Mr. Md. Mumtazuddin, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 14-11-2024

1. Both the appeals have been heard together and

are being disposed of by this common judgment.
2. We have heard Shri N.K. Agarwal, the learned



Senior Advocate for the appellant / Tulsi Mandal and Mr. Md. Mumtazuddin, the learned Advocate for the appellant /Sitara Khatun. The State in both the appeals has been represented by Mr. Bipin Kumar, the learned APP.

3. Both the appellants have been convicted for the offence under Sections 364/34, 302/34 and 201/34 of the Indian Penal Code by judgment dated 23.02.2022 passed by the learned Additional Sessions Judge -III, Purnea in Sessions Trial No. 62/2017 /Sessions Trial No. 157/2017 /CIS No. 62/2017. By order dated 25.02.2022, they have been sentenced to undergo R.I. for ten years, to pay a fine of Rs. 25,000/- for the offence under Section 364/34 IPC; R.I. for life, to pay a fine of Rs. 25,000/- for the offence under Section 302/34 IPC and R.I for three years along with a fine of Rs. 25,000/- for the offence under Section 201/34 IPC. The sentences were ordered to run concurrently.
4. One Sajid, five years old, became traceless and after twelve days, his dead body was recovered from



under a banana tree covered with banana leaf.

5. A peculiar F.I.R was lodged by father of Sajid (deceased), namely, Amrul (PW7) who alleged in his written report lodged on 14.09.2016 that his son (deceased) had become traceless since 03.09.2016. At that time, he was residing at Delhi. An information was provided to Bhawanipur Police Station about the missing of his son. On further enquiry in his village home, he learnt that Sitara Khatoon, one of the appellants and a close relative was behind the kidnapping. When pressure was mounted on the aforementioned Sitara Khatoon, she admitted her guilt and disclosed before the villagers that since the deceased had seen her and the appellant / Tulsi Mandal in a compromising position sometimes in the past, therefore, the deceased was kidnapped, killed and buried in the field under a banana tree. At the instance of appellant / Sitara Khatun, the dead body in the shape of a collection of skeleton was recovered. A wearing apparel also was recovered from the site. He,



therefore, was sanguine that the appellants, because of their immoral activities, had killed the deceased who had witnessed their association in the past.

6. Based on the afore-noted written report, a case vide Bhawanipur P.S. Case No. 163 of 2016 dated 14.09.2016 was registered for investigation for the offence under Section 364, 302, 201 and 34 of the IPC.

7. The F.I.R reveals that the information regarding the occurrence was received in the police station on 14.09.2016 at about 10.15 A.M. The F.I.R was registered at 3.30 P.M. Before the F.I.R. was registered, the dead body (skeleton) is said to have been recovered.

8. A look at the inquest report would make it very obvious that the recovery was sometimes around 11.45 A.M. on 14.09.2016. It was only skeleton without even a shred of muscle or anything which would have made the identification of the skeleton to be of the deceased any easy task. The inquest was



prepared by the police officer and countersigned by
Tabrez Alam (PW10) and Khurshid Alam (PW11).

9. The investigator of this case, namely, Amrendra Kumar Amar (PW12) has deposed before the Trial Court that after the F.I.R. was received in the police station, the investigation was taken up by him. He thereafter reached the place of occurrence where he found the skeleton of the dead body of a child which had earlier been discovered by the informant and his associates. The place where the recovery was made was the field of one Gopal Prasad Singh, who has not been examined at the trial. In presence of witnesses, the skeleton was seized. Even the skeleton was not in one piece; rather the legs and the hands were disjointed. The head was only in the form of a skull. Such recovery was penned down and marked as Ext- 5.

10. We have taken reference of all this only for the reason of satisfying ourselves that the recovery was not by the police at the instance of appellant / Sitara



Khatun as claimed by PW7 and others. In that view of the matter, such recovery would not be admissible under Section 27 of the Indian Evidence Act. We also say this for the reason that by that time, appellant / Sitara Khatun was not in the custody of the police which is one of the essential pre-requisites for triggering of the applicability of Section 27 of the Evidence Act. That apart, we have found it absolutely impossible for anybody to have traced the skeleton to that of the deceased who was five years old.

11. The medico-logical expert examination of the skeleton reflects that metopic sutures of the skull were found to be fused. This is indicative of the skeleton of a person who is between 2 to 4 years of age. However, the sockets in the maxilla with twelve teeth is indicative of being of a child of 20 to 30 months. However, the permanent molars also were visible which again places the age of the person concerned between 6 to 8 years. The cranial vault had reached adult dimensions which never happens before a person



attains the age of seven years. The smearing of ivory like smooth substance over the skull, both on the outer and inner surface, further indicated that the skeleton was of a child of ten years of age. The skeleton was so disjointed that no conclusion could be arrived at with respect to the sexual character of the child. No injury was found on the bones and, therefore, even the cause of death could not be ascertained. In the opinion of the medicological expert team, the exhibits were of a child aged between 8 to 10 years and it was not possible to determine the cause of death from the available bones. Considering the condition of ligaments and the tissues attached, the deceased would have died between 10 to 30 days prior to such examination.

12. This report reveals two things. If the dead body would have been buried inside the ground, the decomposition would not have been to this extent within 10 to 30 days. The place would have smelt foul from a distance. It, therefore, appears that the collection of bones with a skull but without any muscle



attached to it, was something which was lying underground for quite a while and which therefore, could not be linked to kidnapping and murder of the deceased who was only six years of age. The other aspect which becomes very clear is that it is not known as to how such recovery was made. Whether it was at the instance of the appellants or the villagers had stumbled upon such collection of bones, remained unknown. What is very stark is that the recovery was made much prior to the F.I.R. being registered. This is also evident from the narration made in the written report which reflects that the skeleton was recovered and only thereafter the F.I.R. was registered.

13. There is nothing on record to indicate any report to the police about missing of the child. The child became traceless on 03.09.2016 while his father (PW7) was still in Delhi. Whether he disappeared from Delhi or from his village home is left to the imagination of the prosecution. However, what could be gathered from his deposition is that on learning about the



disappearance of his son, enquiry was made by him and it was later learnt that Sitara who stayed in the same house in the village home was responsible for the same. She was subjected to societal pressure whereafter it came to light that she, in association with appellant / Tulsi Mandal, had done the act.

14. This piece of evidence is absolutely unacceptable for the reason that such extra judicial confession is not recorded anywhere and the fact forms part of the prosecution case only through the mouth of the witnesses. The mother of the deceased has not been examined.

15. Where was she ?

16. The husband of appellant / Sitara Khatun was in Delhi at the time when the deceased became traceless. Later, after twelve days, the case was lodged. This development only signifies that there was some suspicion on a co-resident, namely, Sitara and then a story was weaved that a five year old boy (deceased) had seen Sitara and Tulsi Mandal in a compromising



position and, therefore, Sitara and Tulsi Mandal kidnapped the boy and killed him. This story again does not inspire the confidence and trust as being the correct story for two reasons. Even if a five year old boy had seen the amorous relationship between the two appellants, he would not have been in a position to understand the quality of that act to consider it to be amorous and then speak out to others. Secondly, it is not known whether the deceased was residing in the same household at the village home. Since nothing has been said about the actual residence of the deceased and his mother, one is only left with speculation and nothing more.

17. This takes us to the evidence of the investigator again. In his cross -examination, PW12 has further confirmed that before the F.I.R. was registered, the skeleton had already been recovered. The seizure list was prepared when Sitara was not present at that place. Would this then be admissible under Section 27 of the Evidence Act ? The answer is simple no. Even



then, the statement of confession of Sitara was recorded by PW12 on 14.09.2016, almost contemporaneously at about 2.30 P.M. The investigator has also taken the statement of Gopal Singh in whose filed the recovery was made.

18. Md. Hannan (PW2) and one Moti Prasad (PW3) told the investigator that the story of any immoral association between the two appellants was a tissue of falsehood. Nobody had ever seen the appellants mixing around or knowing each other. In fact, on the contrary, Tulsi Mandal was a person of religious dispensation and used to carry on banana cultivation away from the village. He also dealt in the sale and purchase of grains and in that connection, he was a regular visitor to the villager.

19. Incidentally, Md. Hannan (PW2) has also been declared hostile.

20. On a careful consideration of the evidence of the father of the deceased (PW7), we have found that he has all along insisted upon the information which he



and his associates could gather from putting pressure on Sitara Khatun. He had but no idea about Tulsi Mandal.

21. There is yet another fact which is very stark and which needs be noticed carefully is that Sitara Khatun resided in the same house. She is the wife of the brother-in-law of PW7. Sitara and the mother of the deceased are sisters-in-law. With this connection, it is difficult to believe the story projected by the prosecution.

22. Md. Sharif (PW1), a relative of the family and Md. Alam (PW5), the maternal grandfather of the deceased, have also only pandered to the suspicion on the appellants as also the information received by them about Sitara having made disclosure regarding the occurrence.

23. As noted above, Md. Hannan (PW2), Moti Singh (PW3), Naresh Mandal (PW4) and Md. Jasim have turned hostile, expressing complete ignorance about the occurrence.



24. Same vague statements have been made by Md. Sharif (PW1), a co-villager, who has talked about the same story of the killing because of the fear of the immoral relationship between the appellants going public.
25. From the evidence of Tabrez Alam (PW10) and Khurshid Alam (PW11), the two seizure list witnesses, we do not get to know anything contrary than our observation that recovery was made before the F.I.R. was registered and whether it was at the instance of Sitara remains unknown.
26. There are sufficient number of factors which make us doubt the entire story viz. (I) no disclosure about the residential status of the deceased in the immediate past ;(ii) non-examination of the mother of the victim (iii) the recovery made supposedly at the instance of Sitara which remains completely unproved and; (iv) the skeleton remains being so disjointed that no conclusion could be derived from the medicological examination of the same.



27. All this signifies that the story spun by the prosecution is not fit to be believed.

28. We are at a loss to understand as to how the Trial Court could link the collection of bone to that of the deceased in the absence of any other definitive conclusion regarding those skeletons. According to the investigator, those collected bones were sent for forensic examination but till the time the investigator was examined as one of the last witness in the trial, the report had not been received. Though the FSL report is on record and about which reference has been made in the Trial Court judgment, but on perusal of the same, we find that it was only Fax communication from the laboratory, which with the passage of time had become so faint that it was absolutely unreadable. The Trial Court adopted a curious and shortcut approach of holding that the report confirmed the prosecution case.

29. We deprecate such casual observations by a Trial Court, especially when it concerns a case of



extreme importance as a child had become traceless and a relative and a stranger were being attributed with the allegation of kidnapping and killing.

30. We have also noted our reservation about the motive of the appellants to kill the deceased. A five year old boy would not be able to understand any relationship between two strangers and even if he does, he would not be able to communicate it to anybody so as to get a bad name in public. Why at all then, when Sitara had been residing in the same household under the same roof would undertake such a misadventure. Was it then not only a guesswork and Sitara being pressurized to admit her guilt ?

31. All this makes us doubt the very fabric of the prosecution.

32. The prosecution has not been able to prove the case to any extent whatsoever, much less beyond any reasonable doubts.

33. We, therefore, set aside the judgment of conviction and order of sentence.



34. Both the appellants are in jail. They are directed to be released from jail forthwith, if not required or wanted in any other case.
35. Both the appeals are allowed.
36. The interlocutory application/s, if any, also stands disposed of.
37. Let a copy of this judgment be communicated to the Superintendent of concerned jail for record and compliance.
38. Let the records of these appeals be returned to the concerned Trial Court.

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

sunilkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
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