

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.653 of 2023

Arising Out of PS. Case No.-217 Year-2019 Thana- BIKRAMGANJ District- Rohtas

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Ravindra Singh, S/o Sri Lalji Hasah @ Lalji Singh, R/o Village - Karan Sarai
(Koran Sarai Bankat Mathila), P.S. - Saraiya (Koran Sarai), District - Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with

CRIMINAL APPEAL (DB) No. 816 of 2023

Arising Out of PS. Case No.-217 Year-2019 Thana- BIKRAMGANJ District- Rohtas

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Ruksad @ Rukshad, S/o Dilshad, R/o Village - Shivrawane, P.S. - Mudha
Pandey, District - Muradabad (UP).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 653 of 2023)

For the Appellant/s : Mr. Chandra Mohan Singh, Adv.

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 816 of 2023)

For the Appellant/s : Mr. Diwakar Prasad Singh, Adv.

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

**HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 07-01-2025

Both the appeals have been taken up together and are being disposed off by this common judgment.

2. We have heard Mr. Chandra Mohan Singh, the learned counsel for the appellant/Ravindra Singh in Cr. Appeal (DB) No. 653 of 2023 and Mr. Diwakar Prasad Singh, the learned counsel for the appellant/Ruksad @ Rukshad in Cr. Appeal (DB) No. 816 of 2023.

3. The State, in both the appeals, has been represented by Mr. Dilip Kumar Sinha, the learned APP.

4. Both the appellants have been convicted for the offences under Sections 376 and 302 of the Indian Penal Code (*in short the IPC*) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (*in*



short the POCSO Act, 2012) vide judgment dated 19.04.2023 passed by the learned 7th Addl. District & Sessions Judge-cum-Exclusive Special Judge (POCSO), Sasaram in POCSO Case No. 42 of 2019, arising out of Bikramganj P.S. Case No. 217 of 2019. By order dated 28.04.2023, they have been sentenced to undergo R.I. for 20 years, to pay a fine of Rs. 50,000/- each and in default of payment of fine, to further suffer S.I. for six months for the offence under Section 6 of POCSO Act, 2012.

5. A five year old girl is alleged to have been raped and strangled to death. The dead-body was recovered by her father/Santosh Rajwar (P.W. 4) with the help of others. The appellants were suspected to have committed the crime.

6. Appellant/Ravindra Singh is said to have offered a biscuit to the victim before the occurrence. Appellant/Ruksad @ Ruksahd is said to be a friend of Ravindra, who had come from Delhi to visit him. Both of them had been residing in the house of a co-villager for



some time. Both the appellants were, therefore, arrested.

7. It appears from the records that the investigation was concluded only on the basis of suspicion against the afore-noted two appellants. Though some efforts were made to have the appellants medically examined, but there is no report on record which only leads to one inference that nothing concrete could be procured with respect to the offence of rape and murder of the deceased.

8. A horrendous tale by the father of the deceased (P.W. 4), forms the basis of the prosecution case.

9. P.W. 4 (the father) had lodged the *fardbeyan* on 30.04.2019 at Karuna Hospital in Bikramganj at about 10:40 hours, alleging that his wife/Asha Devi (P.W. 3) had informed him at his workplace, a Rice Mill Plant, that his five year old daughter is missing from the home. On such information, he came back home at about 08:30 P.M. on 30.04.2019 and was



told by his wife that Ravindra, who is the son of the co-brother of his neighbour, namely, Surendra Mahto, and his friend, who had come from Delhi, had been playing with the victim/deceased some times ago. On this information, P.W. 4 along with the other villagers went to the house of Ravindra Singh and accosted him and his friend, who did not give any specific reply. In fact, they, may be for pretence, offered to search his daughter. Shortly, thereafter, the dead-body of his daughter was found in the field. From the look of the dead-body, it appeared that she was strangled as there was a ligature mark and the deceased was bleeding from her private parts. This gave an impression that, perhaps, the appellants had raped and killed the deceased.

10. Based on the afore-noted *fardbeyan* statement of P.W. 4, a case *vide* Bikramganj P.S. Case No. 217 of 2019, dated 30.04.2019, was registered for investigation under Sections 376 and 302/34 of the IPC, Sections 4 and 6 of the POCSO Act, 2012 and Sections 3



(2) (V) and 3 (1) (W) (I) (II) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

11. The police, toeing the same line of suspicion, charge-sheeted the appellants, whereupon the case was committed to the Special Court for trial.

12. The Trial Court/Special Court, after having examined eleven witnesses on behalf of the prosecution and one on behalf of the defense, convicted and sentenced the appellants as aforesaid.

13. The refrain of the appellants while commenting on the impugned judgment is that there is no evidence at all against the appellants except for wild suspicion. The other strand of argument on behalf of the appellants is that it is a deliberate attempt on the part of P.W. 4 and his family members to implicate Ravindra and because his friend had visited him from Delhi, him as well so as to lend credence to the story of rape and murder; the reason being a dispute over a plot of land which was purchased by Ravindra in the name of his wife and which



plot of land was under the occupation of P.W. 3, the mother of the deceased and for which, a civil case also was pending in the Courts of law.

14. The grandmother of the victim (P.W. 1) is the only person who had seen Ravindra offering biscuits to the deceased. It was, thereafter, that the mother of the deceased came looking for her. P.W. 1 told the mother of the victim about Ravindra having offered biscuits. Thereafter, the whole story unfolded. The mother of the deceased called her husband (P.W. 4), who came back home and with the help of the villagers found out the dead-body. P.W. 1, in her cross-examination, has admitted that for a plot of land, a case was pending in Bikramganj Court in which, she and Ravindra both were parties. The land in question was in occupation of none. Ravindra Singh had long been working at Delhi and on that day, his friend (appellant/Ruksad @ Rukshad) had also come to the village. When the dead-body of the deceased was recovered, she was found to be wearing a



red T-shirt and a pair of jeans. Be it noted that the prosecution version is that the deceased was found naked in the filed. The suggestion to her that the victim had died a natural death and that this case has wrongly been put up because of land dispute, was vehemently denied by her.

15. The maternal grandmother (P.W. 2) also had the same story to narrate to the Trial Court, namely, of suspicion against the appellants and the recovery of the dead-body shortly thereafter. She had not been examined by the police during the course of investigation. However, she also ratified the factum of a civil case pending between the parties with respect to a tract of land.

16. The mother of the deceased has been examined as P.W. 3, who had not seen appellant/Ruksad @ Rukshad ever before. However, she claims to have seen the appellants at about 5 O' clock in the evening of 29.04.2019. She had no conversation with them. She was told by her mother-in-law (P.W. 1) that Ravindra had offered biscuits to the deceased some times in the



evening. It was suggested to her that some food item consumed by the deceased had made her sick and she died a natural death, but the appellants were framed purposefully, which was denied by her.

17. Similar statement has been made by the father of the victim (P.W. 4), who is the informant of this case. He was very specific in telling the Trial Court that the neck of the deceased was tied and she was gagged with a piece of cloth. She was bleeding from her private parts. In his cross-examination, he has also admitted that he had dispute with appellant/Ravindra. He disclosed that the land in question was purchased by Ravindra in the name of his wife from his uncle and that the dispute was continuing for about four to five years. He had seen both the appellants after the occurrence. Both of them had not made any effort to search out the deceased. He too has denied the suggestion that the appellants were falsely framed.

18. The *post-mortem* on the dead-body was



done by a Medical Board of which Dr. B.K. Puskar (P.W. 5) was one of the members. The Board had found a ligature mark above the thyroid cartilage all around the neck. The hymen was found to be ruptured. There were blood clots around the lower part of the vagina. There were abrasions at two places on the labia-majora. The vaginal swab was taken for histo-pathological examination. There was extravassation of blood under the ligature mark which was discerned on the opening of the neck. The neck muscles were found to be lacerated. The large vessel of the neck was found to be congested and engorged. The tracheal ring and larynx were found to be fractured. There were no other injuries on any other part of the body. According to P.W. 5, the microscopic examination of the vaginal swab was done by one Dr. S.S. Prasad, the Pathologist posted in Sadar Hospital, Sasaram. According to the report prepared by him, no spermatozoa, either dead or alive, was found. The cause of death was opined to be asphyxia and the time of death was placed somewhere between



twelve to twenty four hours approximately.

19. It was, thus, concluded by the Medical Board that even though no spermatozoa was found in the microscopic examination of the vaginal swab, the findings in the *post-mortem* examination suggested that the probability of rape could not be ruled out.

20. Suresh Rajwar and Sanjay Rajwar (P.W. 6 and P.W. 7) respectively did not offer anything specific regarding the occurrence or the accusation against the appellants and, therefore, their depositions are not being discussed presently.

21. The Investigator of this case (P.W. 8) has averred before the Trial Court that he had arrested Ravindra Singh and Ruksad @ Rukshad allegedly after the occurrence. Their clothes were also seized and a seizure-list was prepared (Ext.-4). Both the appellants were sent for medical examination to ascertain whether they were guilty of rape or that they had consumed any intoxicant. The clothes also were dispatched for forensic examination.



22. Sobha Rani (P.W. 9) had also participated in the investigation. She had prepared the inquest report and was of the view that the deceased, perhaps, was first raped and then strangled to death.

23. For the forensic evidence, the Trial Court was offered the evidence of Dr. Suhani Jain (P.W. 10), an Assistant Director of Biological Sciences in State Forensic Laboratory, Patna. She had examined the clothes of the victim and the appellants, dispatched in six parcels. On none of these clothes, there were any sign of semen. All the clothes though bore grey stains, but they were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light.

24. The serologist report (P.W. 11) is of no value to us for the reason that the blood stains were found to be of Group-B but there is no report in record regarding the blood group of the deceased or of the appellants.

25. The maternal uncle of the appellant/Ravindra Singh appeared before the Trial Court



as D.W. 1, who attributed the accusation against him to be a fall out of the land dispute between Ravindra and the parents of the deceased.

26. Thus, for all practical purposes, the only evidence against the appellants is of the grandmother of the deceased having seen Ravindra offering biscuits to the deceased prior to the occurrence. There is no eye-witness to the occurrence nor any witness of even having seen the appellants moving in any direction either prior or after the occurrence. The deceased definitely was strangled to death. There is but no conclusivity about the deceased having been raped. There could be a possibility of the deceased having been raped and we say so for the reason that the hymen of a five year old girl was found to be ruptured and bruises were found at two places on the labia-majora. If the deceased was not raped before strangulation, she was definitely sexually attacked and violated.

27. Who did it is the question, which needs



an answer.

28. Could the giving of a biscuit to the deceased by one of the appellants be a circumstantial evidence to believe that the appellant and his friend had committed the rape and murder?

29. It could be the starting point of the investigation, but it could not be taken as any definite proof of the fact that the deceased was raped and strangled by the appellants.

30. The law pertaining to the appreciation of the circumstantial evidence has been very succinctly explained by the Supreme Court in ***Hanumant Vs. State of M.P. : 1952(2) SCC 71***, wherein it has been held that in cases where the evidence would be of a circumstantial nature from which the conclusion of guilt is drawn, those evidences have to be fully established and all the facts so established ought to be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and



tendency. They should be such as to exclude every other hypothesis, but the one proposed to be proved. Simultaneously, there must be a chain of evidence complete in itself, leaving no room for any reasonable doubt that the accused could be innocent also. Such proposition, by and large, has been followed rather consistently till date. [also refer to ***Tufail Vs. State of U.P. : (1969) 3 SCC 198; Ram Gopal Vs. State of Maharashtra : (1972) 4 SCC 625*** and ***Sharad Birdhi Chand Sharda Vs. State of Maharashtra : (1984) 4 SCC 116***].

31. A further elucidation was made by the Supreme Court in ***Shivaji Sahebrao Bobade & Anr. Vs. State of Maharashtra : (1973) 2 SCC 793***, wherein the Supreme 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*. [also refer to ***Padala Veera Reddy***



Vs. State of A.P. : 1989 Supp. (2) SCC 706; Gambhir Vs. State of Maharashtra : (1982) 2 SCC 351 and Navaneethakrishnan Vs. The State By Inspector of Police : (2018) 16 SCC 161].

32. So far for the appreciation of the circumstantial evidence.

33. We have tested the case from a different angle as well. One of the appellants, viz., Ravindra Singh had purchased a plot of land from the uncle of P.W. 4. This purchase went in dispute. The land, in all probability, was not in the physical occupation of anybody and was lying fallow. Obviously, therefore, there would be enmity between Ravindra and the parents of the deceased.

34. Under what circumstances did appellant/Ravindra offer biscuits to the daughter of the family? Nobody appears had objected to it. This, perhaps, was done in presence of the grandmother of the deceased.

35. Assuming such an incident of



neighbourly affection to be true, could it have given a doubt in the minds of anyone that this was for the purpose of luring the victim to a secluded place? This is not the prosecution case either. In fact, the grandmother (P.W. 1) has categorically stated that because of the land dispute, the victim was raped and murdered. This again appears to be a weird proposition. The dispute was continuing for about four to five years. Appellant/Ravindra Singh is the son of a co-brother of a co-villager.

36. Could enmity have been the motive of subjecting a five year old girl to such a criminal act?

37. Was it for sexual lust?

38. These questions could have been answered if the investigation was not merely based on unfounded suspicion raised by the grandmother, mother and father of the deceased.

39. The appellants were arrested shortly after the recovery of the dead body.

40. There appears to be compliance of



Section 53-A of the Code of Criminal Procedure, but that did not give any satisfactory explanation regarding the correctness of the suspicion against them. If they had raped and killed the deceased, they would not have stayed back in the same village, especially when both the appellants had been working in Delhi.

41. Why would a friend of a co-villager indulge in such activities?

42. We see no reason for the appellants to have done that. We are saying so only for the reason that there is no evidence worth its name for jumping to the conclusion regarding their guilt.

43. It is horrifying to conceive of a situation where the dead-body of a five year old girl would be found thrown in the field with no trace of who committed such offence. Nonetheless, it would be equally horrendous to put the blame on somebody against whom no evidence could be collected.

44. Convicting the appellants, therefore, in



such a situation would not be even paying lip-service to the basic principles of law regarding appreciation of circumstantial evidence.

45. Offering of a biscuit some times prior to the occurrence by a co-villager is no circumstance at all.

46. On this appreciation of the facts of this case, we find the conviction of the appellants to be totally unwarranted.

47. We, therefore, giving benefit of doubt to the appellants, find the judgment impugned to be unsustainable in the eyes of law and, therefore, we set it aside.

48. Both the appellants are acquitted of all the charges levelled against them.

49. The appeals stand allowed.

50. Both the appellants are in jail. They are directed to be released forthwith from jail, if not detained or wanted in any other case.

51. Let a copy of this judgment be



dispatched to the Superintendent of the concerned Jail
forthwith for compliance and record.

52. The records of these cases be returned
to the Trial Court forthwith.

53. Interlocutory application/s, if any, also
stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

Praveen-II/Kundan

AFR/NAFR	AFR
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