

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.593 of 2023

Arising Out of PS. Case No.-161 Year-2020 Thana- BARHIYA District- Lakhisarai

_____ Son of Subal Ram, R/O Vill - New Chavni English Ward No
11, PS – Barahia, Dist – Lakhisarai. Appellant

Versus

The State of Bihar Respondent

Appearance :

For the Appellant : Mr. Arun Kumar, Advocate

For the Respondent : Mr. Abhimanyu Sharma, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 13-03-2026

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. This appeal has been preferred for setting aside the judgment of conviction dated 28.02.2023 (hereinafter referred to as the ‘impugned judgment’) and order of sentence dated 06.03.2023 (hereinafter referred to as the ‘impugned order’) passed by learned Additional Sessions Judge-1st-cum-Children Court, Lakhisarai (hereinafter referred to as the ‘learned trial court’) in G.R. No. 03 of 2022 arising out of Barahiya P.S. Case No. 161 of 2020. By the impugned judgment, the appellant has been convicted for the offences punishable under Sections 302, 341 and 323 of the Indian Penal Code (in short ‘IPC’) and by the impugned order, he has been sentenced to undergo life imprisonment and to pay a fine of



Rs.25,000/- for the offence under Section 302 IPC and in case of default of payment of fine, he has to undergo two years simple imprisonment. For the offence under Section 323 IPC, he has been ordered to undergo one year simple imprisonment and to pay a fine of Rs.1,000/- and in case of default of payment of fine, he has to undergo three months simple imprisonment. He has further been ordered to undergo one month simple imprisonment and to pay a fine of Rs.500/- for the offence under Section 341 IPC and in case of default of payment of fine, he has to further undergo one week simple imprisonment. All the sentences have been ordered to run concurrently.

3. The prosecution case is based on a written information dated 13.07.2020 submitted by one Binod Mahato who is the father of the deceased. In his written information giving rise to the present case, he alleged that on 09.07.2020 at about 08-09 PM in the night, (1) Sachin @ Jatin, (2) this appellant, (3) Sonu Kumar came at his house and took his son, namely, Suraj Kumar with them to the 'bathan' of Munnu Singh and assaulted him badly. The informant's son was assaulted by *lathi*, *danda* and rod. He was admitted in Begusarai and was being treated by Dr. Sanjay Kumar, hence, the written application was given on 13.07.2020.

4. It appears that after lodging of the FIR being Barahiya P.S. Case No. 161 of 2020 dated 13.07.2020, the son of the informant



died, therefore, Section 302 IPC was added in the FIR by virtue of the order dated 20.07.2020 passed by learned Chief Judicial Magistrate.

5. Police conducted investigation of the case and submitted a chargesheet bearing Chargesheet No. 209 of 2020 dated 29.10.2020 in which sufficient materials were found to proceed against the accused-appellant. The learned Magistrate took cognizance of the offences vide order dated 18.03.2021 and after finding that the appellant is being prosecuted for the offences triable by the court of sessions, learned Magistrate committed the records to the court of sessions where it was registered as G.R. No. 03 of 2022.

6. In the court of sessions/ trial court, the charges were explained to the accused-appellant in Hindi who denied the charges and claimed to be tried. Accordingly, charges were framed against him vide order dated 18th August, 2022 for the offences punishable under Sections 302/34, 341/34, 323/34 and 504/34 IPC.

7. In course of trial, the prosecution examined as many as nine witnesses and got exhibited certain documents. The list of prosecution witnesses and the documents are given hereunder in tabular form:-

List of Prosecution witnesses

PW-1	Parwati Devi
PW-2	Pankaj Kumar
PW-3	Madhukar Kumar



PW-4	Vivek Kumar
PW-5	Binod Mahto
PW-6	Shobha Devi
PW-7	Manoj Kumar Sharma
PW-8	Ranjan Kumar
PW-9	Dr. Kumar Mayank

List of Exhibits on behalf of Prosecution

Exhibit ‘1’	Signature of the informant on written application
Exhibit ‘2’	Signature and handwriting of I.O. on chargesheet
Exhibit ‘3’	Signature and handwriting of Dhirendra Kumar recognized by I.O. on the formal FIR
Exhibit ‘4’	Signature on the postmortem report by the doctor

8. It also appears that the appellant claimed juvenility by filing an application on 19.09.2020 in the court of learned CJM whereafter the records of the appellant was separated and it was sent to the Juvenile Justice Board (in short ‘Board’) for inquiry and trial. The Board, however, found that the child in conflict with law was 19 years as per the medical report. It was concluded that the accused-appellant was aged about 18 years 6 months 5 days on the date of occurrence. It, however, appears that the order of learned Juvenile Justice Board was set aside in Cr. Appeal No. 11 of 2021 and the Board was directed to once again examine the age of the accused-appellant on the basis of a school certificate. Finally, the age of child in conflict with law was adjudged as 17 years 8 months 22 days on



the date of occurrence. The said order was also challenged in Cr. Appeal No. 30 of 2021 which was dismissed by the learned ADJ-I.

9. Thereafter, the psychological evaluation of the child in conflict with law was conducted under Section 15(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 and it was found that at the time of commission of offence he was having sufficient knowledge regarding the crime and gravity of offence. His records were, therefore, referred to the Children Court for conducting trial as an adult. The above-named prosecution witnesses were examined and the prosecution evidence was closed on 05.12.2022. Subsequently, statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure and on the same day on the request of defence counsel, defence evidence was also closed.

Findings of the Learned Trial Court

10. Having analysed the entire evidence available on the record, learned trial court proceeded to record a finding as regards the various charges levelled against the appellant. The learned trial court held that the charges under Sections 341/34, 323/34 and 302 IPC have been proved beyond all reasonable doubts. So far as the charge under Section 504 IPC is concerned, the trial court held that there is nothing available on the record which would prove that the deceased was abused with foul language or absurd language. The learned court further records that there is no evidence regarding



explicit utterance of abusive language and as such, the charge under Section 504 IPC is not conclusively proved. While dealing with the charge under Section 302 IPC, the learned trial court held as under:-

“27. Almost all the witnesses who have supported the prosecution story and made it clear that the deceased was badly beaten and he was beaten in such a manner that in all likelihood the assault was sufficient to cause death and thus Section 302 IPC is proved beyond reasonable doubt.”

11. This Court finds that the learned trial court has, in paragraph ‘29’ of the judgment dealt with the statement of the informant (PW-5) and referring to paragraph ‘2’ of the deposition of the informant, the trial court records that in paragraph ‘2’, the informant clearly says that it was none else than (appellant) who called his son at about 8-9 O’clock and he says that he has no idea as to which place his son was taken away but the learned trial court opined that this is almost clear that the son of the informant was last seen with the appellant, hence, the last seen theory of the Indian Evidence Act comes into play.

12. The learned trial court thereafter held with the last seen theory and relies upon the evidence of the I.O. (PW-7) who claimed that he had gone to local hospital, Begusarai and had taken the statement of Suraj Kumar and the injured (since



deceased). Relying upon the deposition of the I.O. (PW-7), the learned trial court held that the recording of dying declaration was clearly mentioned in paragraph '18' of the police case diary and there also the description of the dying declaration is conspicuous, hence, this fact is clearly proved that it was appellant who had assaulted the deceased with all intention and knowledge that his assault would result into the death of the victim.

13. In the conclusion part of the judgment, the learned trial court has recorded that except the informant, no other witness has supported the story of the prosecution. The learned trial court found that almost all the witnesses who have been declared hostile can be presumed to be hearsay witnesses because all of them have narrated that they had not seen the occurrence through their own eyes. The learned trial court has further found that there was some procedural aspect which might show some latches in the police procedures but that has nothing to do with the evidentiary value of the instant case because the statement of all the witnesses are coherent and synchronous to each other as well as to the FIR.

Submissions on behalf of the Appellant

14. While assailing the impugned judgment and order of the learned trial court, learned counsel for the appellant submits that the learned trial court seems to have proceeded with the pre-



conceived notion that the appellant is guilty of committing the offence. It is submitted that the judgment of conviction is based on a perverse finding of fact without proper appreciation of the evidences available on the record.

15. It is submitted that mere bald statement of the I.O. (PW-7) in paragraph '7' of his deposition in course of trial has been believed as dying declaration even as no memorandum of dying declaration has been brought on record by way of evidence.

16. Learned counsel submits that in this case, the FIR itself was lodged after four days of the occurrence. The trial court accepts that all the witnesses except the informant has been declared hostile and they are hearsay witnesses, therefore, the only prosecution witness whose evidence is required to be considered in this case is the informant (PW-5). It is pointed out that the informant (PW-5) has categorically stated that he had got written the application from someone else. He had only put his signature on the same. His signature has been marked Exhibit '1' but not the whole application as the author of the said application is not known and had never been produced in course of trial.

17. Learned counsel further submits that the informant has admitted in paragraph '2' of his deposition that he was at his work when the appellant came and took away his son from his



house at 9 O'clock in the night. In paragraph '3' of his deposition, the informant (PW-5) has clearly stated that he did not identify the accused. In paragraph '4' of his deposition, he has stated that when Suraj Kumar was taken away, he was not in the house and someone told him that Sonu Kumar had taken away his son. In paragraph '5', the appellant has stated that the accused who was present in the dock had not called and had not taken away. Learned counsel submits that on the face of the deposition of the informant (PW-5), the manner in which the learned trial court has appreciated his evidence has led to perversity. Learned trial court has not gone into the entire evidence and has chosen to write one or two line from the deposition of the informant only because the court was all set to convict the appellant.

18. Learned counsel further submits that once there is no eye-witness of the occurrence who has seen the appellant in the company of the deceased at any time before he was found in the injured condition, the last seen theory would not be attracted. Even otherwise, last seen theory is supposed to be a very weak theory and a conviction based on the said theory alone would not be safe.

19. It is submitted that the learned trial court has referred paragraph '18' of the case diary even as the same does not form



part of the evidence and no dying declaration, if any, present in the case diary have been proved in course of trial.

Submissions on behalf of the State

20. Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State has indeed found it very difficult to defend the impugned judgment and order. We can appreciate his position because the duty of the Public Prosecutor is not to ensure somehow conviction of the accused, a Public Prosecutor is required to assist the Court fairly in reaching to a just and proper conclusion.

21. Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State has fairly submitted before this Court that on the face of the kind of deposition of the informant (PW-5), his condition is worse than a hostile witness. It is not known how the learned trial court would have placed reliance upon the evidence of the informant (PW-5) to reach to a conclusion that his evidence is consistent with the prosecution case.

Consideration

22. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also on going through the evidence available on the record, we have a little choice rather no choice to take a view other than that of acquittal



of the accused-appellant. We are, in fact, of the considered opinion that the finding of the learned trial court is perverted. The learned trial court itself records that except the informant (PW-5) all other witnesses have turned hostile and are in the category of hearsay witnesses but then the trial court has attached much evidentiary value to the evidence of the informant (PW-5).

23. We have noticed from the deposition of PW-5 that he was not present in the house when his son (since deceased) was taken away. He has stated that he had been told by someone that one Sonu Kumar had taken away his son. He has also stated that the accused who was present in the dock was not involved. What else was required for the defence to create a doubt in the prosecution story? The learned trial court seems to have not gone into the entire evidence of the informant (PW-5) and has recorded only one or two lines from his deposition without finding any linkage with the entire deposition.

24. We have further found that the learned trial court has treated the statement made by the I.O. (PW-7) in course of trial as if it would fall in the category of a dying declaration. We are afraid that a bald statement of the I.O. in course of trial that he had recorded the statement of the victim in the hospital, without bringing the said statement on the record and then giving an



opportunity to the defence to test the veracity of the same would be of no avail. We record a finding of perversity even on this aspect. This Court has further noticed that the Doctor who conducted the autopsy on the dead body of the deceased has been examined as PW-9. He had examined the dead body on 19.07.2020 at the Sadar Hospital, Lakhisarai. He had found the following ante-mortem injuries:-

- “(1) Abrasion over right leg and left arm.
- (2) Swelling over both hand and ankle.
- (3) Water in both lungs and water in trachea.
- (4) Blood in all four chambers of heart.
- (5) Water is in stomach.”

25. According to PW-9, the cause of death was asphyxia (antemortem drowning). The post-mortem report (Exhibit ‘4’) gives rise to a different story, question remains as to who threw the dead body of the victim in the water and how the dead body was taken out and who were the persons who had taken out the body from the water. The prosecution has not even brought on record the treatment particulars of the deceased or proof of his admission in any hospital at Begusarai.

26. In ultimate analysis of the entire evidence on the record, we are of the considered opinion that it is a case of no evidence. The trial court has grossly erred in convicting the appellant and imposing a sentence of life imprisonment.



27. The impugned judgment of conviction and the order of sentence dated 28.02.2023 and 06.03.2023 respectively passed by learned Additional Sessions Judge -1st-cum-Special Judge, Children Court, Lakhisarai in G.R. No. 03 of 2022 arising out of Barahiya P.S. Case No. 161 of 2020 are, accordingly, set aside.

28. The appellant is acquitted of the charges punishable under Sections 302, 323 and 341 IPC. The appellant is in jail, therefore, he shall be released forthwith if not wanted in any other case.

29. The appeal is allowed.

30. Let a copy of this judgment together with the trial court records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

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