

(2013) 12 PAT CK 0012

In the Patna High Court

Case No : Criminal Revision No. 1763 of 2009

Jahana Khatoon

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-12-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Evidence Act, 1872 — Section 8

Citation : (2013) 12 PAT CK 0012

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : Madan Kumar, Additional. P.P. Incharge, for the Respondent

Final Decision : Dismissed

Judgement

Aditya Kumar Trivedi, J.—Petitioner/informant has challenged the judgment dated 18.09.2009 passed by Additional Sessions Judge-III, Darbhanga in Sessions Trial No. 134 of 2009 acquitting the Opposite Party Nos. 2 to 7. Jahana Khatoon (P.W. 8) gave her fardbeyan on 13.09.2008 at about 7.30 A.M. disclosing therein that on previous day at about 5 P.M. her daughter Rozi Parveen along with her cousin sister Sarwari aged about 11 years and Phua Farzim Khatoon aged about 12 years had gone to Ratanpura for purchasing fruits for the purpose of Aftari and all the girls returned back after purchasing the same. During course of cutting of fruits one apple was found rotten and on account thereof, she enquired from her daughter why she has purchased rotten fruits. Rozi Parveen said just she is coming after exchanging the fruit and then, she proceeded alone to Ratanpura. Then thereafter she did not return. They have made hectic search up to 11 P.M. but could not traced her. Again at the morning she along with her family members gone in search of Rozi Parveen and when they reached in the mango orchard of Kalu Khan, at western flank near railway bridge they have found Salwar of Rozi Parveen. Then thereafter so many persons assembled there who managed to get the dead body out from the ditch. She

identified the dead body of her daughter. Blood was oozing out from her nose and there was black spot at so many places over chest. Lip was swollen. Vagina was swollen and for that she had opined that after ravishing her the accused persons might have committed murder to screen themselves. During course of enquiry from Sarwari as well as Farzim Khatoon at the previous night they have disclosed that Safi Alam along with his son Gulab was present at their flour mill. Five persons were standing near more ahead of flour mill whom they have claimed identification. She had further disclosed that few days back the people of Thalwara had threatened. On the basis of the aforesaid fardbeyan Ashok Paper Mill P.S. Case No. 86 of 2008 was registered against unknown and investigation was taken up. After submission of chargesheet against the Opposite Party Nos. 2 to 7, the trial commenced and concluded by the judgment impugned which happens to be the subject matter of instant revision.

2. It has been submitted on behalf of the petitioner that altogether 14 P.Ws. have been examined in this case who had consistently proved the allegation against the Opposite Party Nos. 2 to 7 and on account thereof, the finding so recorded by the learned Trial Court happens to be perverse. It has further been submitted that there was proper identification of Opposite Party Nos. 2 to 7 who were present near about the place of occurrence since before passing of victim as well as Sarwari and Farzim Khatoon and from their conduct, it is apparent that none-else than Opposite Party Nos. 2 to 7 seeing the Rozi Parveen alone going to Ratanpura planned and during course of returning pounced upon her, dragged her and then after committing rape, murdered her just to screen themselves. So submitted that the inference should be drawn against Opposite Party Nos. 2 to 7 with regard to be author of the crime on the basis of the evidence having been adduced by the prosecution during course of trial.

3. At the other hand, the learned Additional P.P. submitted that during course of exercising revisional jurisdiction reappraisal of evidence is not at all permissible unless and until there happens to be glaring defect persisting on the record during course of appraisal of evidence.

4. It has been submitted on behalf of Opposite Party Nos. 2 to 7 that the judgment of acquittal should not be brushed aside in routine manner because of the fact that having the judgment of acquittal, the theme of innocence in favour of Opposite Party Nos. 2 to 7 has further lent. It has also been submitted that even if the material on the record speaks two views then in that event, the view supporting the acquittal has to be accepted. As such, the judgment impugned did not warrant interference.

5. Apart from examination of 14 P.Ws., series of document have been exhibited on behalf of prosecution. Now coming to the nature of evidence, it is apparent that P.Ws. 1, 2 and 14 are formal witnesses. P.W. 12 is the witness who had proved inquest. With regard to status of P.Ws. 3 and 4, it is evident that they stood as hearsay witnesses. P.W. 13 is the I.O. The doctor has not been examined and so, the postmortem report is found exhibited by P.W. 14, formal

witness.

6. It is an admitted fact that none is an eye witness to the occurrence. That means to say there is absence of direct evidence. So, the case rest upon circumstantial evidence.

7. In R. Shaji Vs. State of Kerala, , the principle guiding the case based upon circumstantial evidence has been laid down in following way:-

Para-23 It is a settled legal proposition that the conviction of a person accused of committing an offence, is generally based solely on evidence that is either oral or documentary, but in exceptional circumstances, such conviction may also be based solely on circumstantial evidence. For this to happen, the prosecution must establish its case beyond reasonable doubt, and cannot derive any strength from the weaknesses in the defence put up by the accused. However, a false defence may be brought to notice, only to lend assurance to the Court as regards the various links in the chain of circumstantial evidence, which are in themselves complete. The circumstances on the basis of which the conclusion of guilty is to be drawn, must be fully established. The same must be of a conclusive nature, and must exclude all possible hypothesis except the one to be proved. Facts so established must be consistent with the hypothesis of the guilt of the accused, and the chain of evidence must be complete, so as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused, and must further show, that in all probability the said offence must have been committed by the accused Vide: Sharad Birdhichand Sarda Vs. State of Maharashtra, ; and Paramjeet Singh @ Pamma Vs. State of Uttarakhand,

8. Now coming to the nature of evidence adduced on behalf of prosecution, it is suffice to say that none had seen the deceased Rozi Parveen having been in association with Opposite Party Nos. 2 to 7 nor any one had stated that they have seen Opposite Party Nos. 2 to 7 taking away the deceased Rozi Parveen. It is also evident that before recording of fardbeyan, informant had talk with remaining two girls, namely, Sarkiari, Farzin who had spoken to her regarding presence of five persons near More, but had not named them. Furthermore, as per fardbeyan Md. Akbar (P.W. 9) and Md. Aftab Alam (P.W. 5) have joined informant along with others during course of search, but they uttered nothing during course thereof and that happens to be reason behind recording of fardbeyan against unknown.

9. However during course of trial all the P.Ws. have developed the case by claiming identification of accused who were standing near More without having factum of identification ascertained by means of T.I.P. during course of investigation not been ascertained through examination of independent witnesses having their presence near, around alleged Iddgah.

10. P.W. 5. is the uncle of deceased. He had said that the occurrence is of dated 12.09.2008 at about 6 P.M. Ramjan was going on. While he was returning from market to his house at about 5.30 P.M. he had seen Shambhu Sahni, Ashok

Sahni, Tilti Sahni, Baidya Nath Sahni, Jagarnath Sahni and Shankar Sahni standing near culvert north to the house of Sitaram Sahni. When he proceeded further he saw his niece Rozi Parveen aged about 11 years coming. On query, she disclosed that after exchanging rotten apple from a shop at Ratanpura she is coming. Then he had gone towards his house. After Aftari, he came to know that Rozi Parveen has not returned. At that very time, they were sitting at Samudaiyak Bhawan where Jahana Khatoon came and disclosed. Thereafter they began to search Rozi Parveen but could not trace out. At about 11 P.M. police was informed. On following morning, he came to know that her dead body has been found from a ditch west to mango orchard of Kalu Khan. Her apparel were also found. Police came and seized the article whereupon he had put his signature. During cross-examination at para-8, he had stated that his statement was recorded by the police. In para-12, he claimed identification of all the accused persons.

11. P.W. 6 is Sarwari Khatoon the cousin sister of deceased. She had disclosed that on the alleged date and time of occurrence, first of all she along with Rozi, Farhim Khatoon had gone to Ratanpura to purchase apple at about 5 P.M. They returned back after purchasing apple. During course of returning she further found Shambhu Sahni, Ashok Sahni, Tilti Sahni, Baidya Nath Sahni, Jagarnath Sahni and Shankar Sahni standing near Idgah. They began to laugh seeing them. They came to their house. As one apple was musty hence Rozi Parveen gone to Ratanpura for exchange but she had not returned. Thereafter all the family members began to search but they could not locate her. On the following morning, during course of search her dead body was found in a ditch near railway line. She had further disclosed the sign of injury over the dead body. Then had identified the accused. In para-8 of her cross-examination, she had admitted that she had not named Ashok before the police. In para-11, she had disclosed that up till 11 P.M. search continued. In para-17, she had disclosed that flour mill of Safil Alam happens to be near the Idgah where the villagers go to grind flour. The house of Saifullah Khan lies by the side of flour mill. Jagarnath Sahni, Baidya Nath Sahni and Shambhu Sahni's house lies near Idgah. Her house as well as house of Rozi Parveen also lies near it. Then again had said that Jagarnath Sahni, Baidya Nath Sahni and Shambhu Sahni's house lies at village-Ratanpura. Then had shown source of identification of Tilti Sahni @ Sanjay Sahni as well as Shankar Sahni. She had further disclosed that she had narrated the event of her uncle, aunt, brother relating to laughing of Opposite Party Nos. 2 to 7 after seeing them.

12. P.W. 7 is the Farahim Khatoon. She had stated that on the alleged date and time of occurrence she along with Rozi Parveen and Sarwari had gone to Ratanpura to purchase apple. During course of return they have seen Baidya Nath Sahni, Jagarnath Sahni, Tilti Sahni @ Sanjay Sahni, Ashok Sahni and Shankar Sahni near Idgah who began to laugh seeing them. Thereafter they came back to their house. Rozi Parveen had gone to Ratanpura to exchange of musty apple but she did not return up to 10-11 P.M. There was hectic search.

She could not traced out. On following morning again search was made and during course thereof, one Salwar was found at the bank of river. Dupatta was floating over water. Then Aftab had gone into water and took out dead body of Rozi Parveen. There was spot over dead body. Blood was oozing out from nose. During cross-examination, she had admitted that they have not gone to purchase fruit since before day of occurrence. They had purchased fruit from Maimu Khatoon. Fruit was purchased only by Rozi Parveen weighing 250 grams counting two. During course of return they have seen the accused persons two feet away from Idgah. In para-9, she had disclosed that she had not gone along with Rozi Parveen subsequently. On the following morning, she came to know that Rozi Parveen had not returned. In para-21, she had disclosed that the dead body was found in a river lying north to her village. The police came after recovery of dead body. She further disclosed that she had narrated the event to her Bhabhi who had disclosed the same to the police.

13. P.W. 8 is Jahana Khatoon, the informant. She had stated that on the alleged date and time of occurrence Sarwari, Farzim Khatoon and Rozi Parveen have gone to Ratanpura to purchase fruit for Aftari. Then thereafter, they returned back. Because of the fact that one apple was rotted therefore, Rozi Parveen gone to Ratanpura to exchange the same. Rozi Parveen did not return. On account thereof, they began to search. They had gone to Angan of Sitaram where Jagarnath Sahni and Baidya Nath Sahni were present. They were enquired over which they shown their ignorance. Tilti Sahni @ Sanjay Sahni was also found over road who also disclosed his ignorance. On the following morning while the search was going on they have found Salwar at the western side of orchard. River like ditch happens to be there. Orhani of Rozi Parveen was floating and then her dead body was taken out. She was necked. Blood was coming out from nose. Lips were swollen. Police came before whom she had given her statement. Rozi Parveen was aged about 12 years. Then had disclosed that Farhan had narrated that while they were returning Shambhu Sahni, Ashok Sahni, Tilti Sahni, Baidya Nath Sahni, Jagarnath Sahni and Shankar Sahni were standing near Idgah who laughed seeing them. Then had identified the accused. During cross-examination, she had disclosed that Farzim Khatoon and Sarwari have also joined during search. She had further stated in para-12 that she had not seen any kind of occurrence. In para-13, she had further said that she had not disclosed before the police whatever was stated by Farhin and Sarwari. In para-14 she had stated that Rozi Parveen had purchased fruit from Subhan. Then had disclosed that while they were returning in the night itself they have seen Tilti Sahni @ Sanjay Sahni near the house of Sitaram. She has further disclosed that she had not gone to house of Sitaram since before the occurrence.

14. P.W. 9 had stated that on the alleged date and time of occurrence, he opened Roza on village-Usmanpur. Then performed Namaz. While was returning to his house, he had seen Shambhu Sahni, Ashok Sahni, Tilti Sahni, Baidya Nath Sahni, Jagarnath Sahni and Shankar Sahni coming in haste all on a sudden near Idgah and any how they arrested themselves against dashing with bicycle.

Thereafter, they went towards Ratanpura. He had gone to his house. While he was present at Samudaiyak Bhawan, Aftab and Jahana Khatoon came and said that Rozi Parveen who had gone to exchange apple had not returned. They all have gone in search of Rozi Parveen up to Ratanpura but they could not trace out. Then he had gone to the shop of Subhan and enquired from his wife who said that Rozi Parveen had gone. On the following morning, during course of search Salwar was found west to the mango orchard of Kalu Khan. They also saw Dupatta of Rozi Parveen floating over water in a ditch lying by the side of orchard and then her dead body was taken out which was necked so many spots were found over dead body. Blood was also oozing out from nose. Lips were swollen. Police came over which his aunt gave statement. One chappal was also found in the orchard. During cross-examination from paras-9, 11 and 12 there happens to be contradiction.

15. P.W. 10 had stated that returning from Ratanpura after purchasing apple, Farzim and Sarwari disclosed that six boys have laughed seeing them near the Idgah. Then had said that Rozi Parveen had gone to exchange the apple on account of being rotten but could not return. They made hectic search. Akbar had disclosed that six boys any how escaped dashing against his bicycle. On following morning during course of search, dead body was found. In paras-9, 10 there happens to be contradiction.

16. P.W. 11 had stated that he happens to be father of deceased and at the time of occurrence, he was at Dhanbad. Jahana Khatoon telephoned him and disclosed that Rozi Parveen had not returned from the market where she had gone to purchase apple. On the following morning at about 9.30 A.M. he reached at his house and found large number of persons assembled at the orchard. He reached there and found the dead body of his daughter. She was necked. There was presence of injuries over her dead body. He had further disclosed that Akbar had said to him that he had seen Shambhu Sahni, Ashok Sahni, Tilti Sahni, Baidya Nath Sahni, Jagarnath Sahni and Shankar Sahni coming out from orchard in perturbed condition. Paragraph-6 happens to be contradiction.

17. P.W. 13 is the I.O. He had disclosed that after coming to know about recovery of a dead body at Usmanpur Tola, he rushed, seeing the dead body, took up fardbeyan, seized the dead body, prepared inquest and sent the dead body for postmortem. He had also prepared the seizure list with regard to apparel seized therefrom. Seen the place of occurrence. The first place of occurrence happens to be the ditch and the second place of occurrence happens to be orchard of Ahmad Khan where he had found the grass trampled. One Janghia (shorts) of red colour was found and was seized for which seizure list was prepared. Recorded statements of the witnesses. Dog squad was requisitioned. He also followed. Accused Baidya Nath made extra judicial confessional statement and further accompanied him to a place from where one chappal was found. He got the statement of witnesses recorded u/s 164 Cr.P.C. and then submitted chargesheet. During cross-examination in para-13, he has admitted that none of

the witnesses had disclosed him that they had seen the accused persons taking away the deceased for committing rape upon her, putting the dead body in ditch. He had corroborated the contradiction of the witnesses as is evident from para-15 (relating to Rambriksh Sahni), para-32) (Akbar Ali). Then had admitted that he had seized one chappal, on 13.09.2008, while the alleged extra judicial confessional statement of Baidya Nath Sahni happens to be dated 14.10.2008. He had further admitted that no chappal was recovered, seized on the basis of extra judicial confessional statement of Baidya Nath Sahni.

18. Because of non-examination of Doctor the relevancy of postmortem report is not at all found admissible. Therefore, lapses on the part of prosecution on this very score is found major dent in the prosecution case. It is also evident from the evidence of the witnesses that house of Saifullah as well as flour mill of Safi Alam had not been shown by the investigating officer during course of inspection of P.O. although admitted by the prosecution witnesses. By such activity, the prosecution tried to replace them from the place of occurrence because of the fact that showing their presence near the P.O. would have put an obligation to examine them at least during course of investigation as well as there was also possibility of presence of independent witnesses who might have gone to grind flour at the flour mill of Safi Alam and on that very score, identification of those O.P. Nos. 2 to 7, as stated by the prosecution must have been under dispute that too in the background of having O.P. Nos. 2 to 7 not named at an initial stage of litigation. In likewise manner, the houses of other accused had not been shown near P.O. nor the I.O. had stated that he had gone to the house of Shankar Sahni and his brother, Tuntun Sahni at least to perceive their conduct in terms of Section 8 of the Evidence Act, as during course of search Tuntun Sahni and Shankar Sahni, his father Sitaram Sahni including other family members were found present inside their house being admitted by the prosecution itself.

19. Now coming to the other evidences, it is apparent that the occurrence is of the month of September. From the evidence of the witnesses, the distance from Idgah to their houses have clearly been disclosed. Md. Aftab Alam (P.W. 5) at 5.30 hours have seen the accused persons standing near Idgah as well as found deceased Rozi Praveen passing through. From the evidence of P.W. 9 Md. Akbar, it is evident that after Aftari and performing Namaz when he returned back to his house from Asma and during course thereof, he found all the accused persons having in perturbed condition, appeared all on a sudden near Idgah but his subsequent conduct is not at all found to be genuine in having the aforesaid event not disclosed to the other witnesses as well as during course of search and having meeting with the accused persons, he had not cast suspicion. At least, till then the prosecution was very much apprehensive regarding disappearance of deceased Rozi Parveen as well as having the company of P.W. 5 Md. Aftab Alam who had seen the proximity according to his version. The evidence of P.W. 11, the father of the deceased had gone a step forward by stating that P.W. 9 Md. Akbar had stated that he had seen the accused persons coming out from the orchard which P.W. 9 Akbar had not deposed.

20. As stated above, it happens to be a basic requirement with regard to the cases based upon the circumstantial evidence that the chain should be found completed in such manner that no other inference than culpability of the accused should be inferred therefrom.

21. From evidence so produced during course of trial, it is evident that at an initial version Opposite Party Nos. 2 to 7 were not named. Even having presence of P.W. 5, P.W. 9 along with Sarwari (P.W. 6), Farahim Khatoon (P.W. 7) they have said nothing. During course of search, all the prosecution witnesses did not show their suspicion, presence of some of the accused at their house was there, even though they were not apprehended by the I.O. Prosecution had materially developed its case during trial to grip against the accused. And the cumulative effect happens to be complete failure on the part of prosecution to interlink the event against the Opposite Party Nos. 2 to 7. Consequent thereupon, instant revision petition is found devoid of merit, hence is dismissed.