

(2023) 07 PAT CK 0081

In the Patna High Court

Case No : Criminal Appeal (DB) No. 828 Of 2017

Mulur Mahto @ Mullar Mahto @ Ramsudish Mahto

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 31-07-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 376
Code Of Criminal Procedure, 1973 — Section 164
Evidence Act, 1872 — Section 7, 8, 27

Citation : (2023) 07 PAT CK 0081

Hon'ble Judges : Sudhir Singh, J;Chandra Prakash Singh, J

Bench : Division Bench

Advocate : Krishna Kant Singh, Bipin Kumar

Final Decision : Dismissed

Judgement

1. Heard the learned counsel for the appellant and learned A.P.P. for the State.
2. The present criminal appeal has been preferred against the judgment of conviction dated 16.05.2017 and the order of sentence dated 18.05.2017 passed by Shri Arvind Kumar Pandey, Additional Sessions Judge 2nd, Motihari, East Champaran in Sessions Trial No.473 of 1995/ 31 of 2017 arising out of Govindganj P.S. case No.23 of 1995, whereby and whereunder the appellant has been convicted under Sections 376 and 302 r/w 34 of the Indian Penal Code (referred to 'I.P.C.') and has been sentenced to undergo rigorous imprisonment for ten years with fine of Rs.10,000/- for the offence under Section 376 of I.P.C. and in default of payment of fine, further imprisonment for six months and the appellant has been sentenced to undergo imprisonment for life with fine of Rs.10,000/- for the offence under Section 302 r/w 34 of I.P.C. and in default of payment of fine, further imprisonment for six months. Both the sentences have been directed to run concurrently.
3. The prosecution case, as per the fard beyan of informant Rama Shankar Prasad (P.W.11) recorded by S.H.O., Govindganj Police Station on 19.03.1995 at

about 11:30 a.m. is that on 17.03.1995 at about 5 p.m. informant's daughter, aged about 7 years, in course of playing went somewhere in the village and thereafter she was found missing. In course of search, the informant learnt in the morning of 19.03.1995 that appellant Mulur Mahto in the evening of 17.03.1995 had caught hold the hands of his daughter on the pretext of taking her to her house. On getting such information, the informant started searching Mulur Mahto and went his house, but he was not found at his home. The informant got information from the nearby people that Mulur Mahto is absconding a day after Holi i.e. on 17.03.1995. The neighbours also told that Mulur Mahto was a drinker having bad character. The informant suspected that somebody, on the pretext of taking the victim to her home, took the victim somewhere and killed her.

4. On the basis of aforesaid fardbeyan of informant, Govindganj P.S. case No.23 of 1995 dated 19.03.1995 was registered. After investigation, the Investigating Officer submitted charge sheet for the offence under Sections 302, 376 r/w 34 of I.P.C. and thereafter cognizance was taken by the Jurisdictional Magistrate and thereafter the case was committed to the court of Sessions. Charges were framed against the appellant to which the appellant pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined altogether fourteen witnesses, namely, Md. Shamim (P.W.1), Bholu Giri (P.W.2), Shravan Kumar Das (P.W.3), Sanjay Kumar Verma (P.W.4), Vinod Kumar (P.W.5), Phulmati Devi @ Tulpati Devi (P.W.6), Om Prakash (P.W.7), Bharat Giri (P.W.8), Raj Kumari Devi (P.W.9), Bishambhar Yadav (P.W.10), Rama Shankar Prasad-informant (P.W.11), Dr. Uday Shankar Pathak (P.W.12), Bishwanath Prasad (P.W.13) and Raj Kaushal Kumar (P.W.14). In support of its case, the prosecution has also produced exhibits as Ext.1 (formal F.I.R. including fardbeyan), Ext.2 (signature of Binod Kumar Yati on fardbeyan), Ext.2/1 (signature of Bishwambhar Yadav on carbon copy of Inquest report), Ext.2/2 (signature of Rama Shankar Prasad on fardbeyan), Ext.3 (postmortem report), Ext.4 (statement of Om Prakash @ Ravi Shankar under Section 164 Cr.P.C.), Exts.4/1 and 4/2 (signatures of Bishwanath Prasad, J.M., Motihari and Om Prakash on the statement of Om Prakash @ Ravi Shankar under Section 164 Cr.P.C. respectively), Ext.2/3 ((signature of Raj Kaushal Kumar on fardbeyan), Ext.5 (confessional statement of Mulur Mahto), Exts.5/1 to 5/2 (signatures of Mulur Mahto and Raj Kaushal Kumar respectively on the confessional statement of Mulur Mahto), Ext.6 (Inquest report) and Ext.2/4 (signature of Raj Kaushal Kumar on Inquest report). The defence has not produced any oral or documentary evidence in support of its case. After conclusion of the trial, the learned Trial Court convicted and sentenced the appellants in the manner as indicated above.

6. Learned counsel for the appellant has submitted that while passing the judgment of conviction and order of sentence, the learned trial Court had overlooked the several infirmities and, therefore, the impugned judgment is not

sustainable in the eyes of law. It has been submitted that there is no direct evidence on record to connect the appellant with the alleged crime. The alleged recovery of the dead body of the deceased does not amount to a relevant fact for consideration. It has been argued that the appellant in the present case has been falsely implicated and the prosecution has miserably failed to prove its case beyond reasonable doubt against the appellant. Thus, it has been contended that there is absence of sufficient material to sustain the conviction of the appellant and, therefore, finding of the learned trial Court is bad in law, wrong on facts, bereft of legal reasoning, devoid of merit and the judgment of conviction and order of sentence are fit to be set aside.

7. Learned APP for the State, on the other hand, has submitted that the judgment of conviction and order of sentence under challenge require no interference as the prosecution has been able to prove the case beyond all reasonable doubts. It has been contended that the prosecution witnesses have remained consistent in the testimony during the course of trial. It was submitted that the disclosure of fact in the confessional statement of the appellant (Exhibit 5) regarding the commission of alleged crime and the manner in which the victim was done to death is in corroboration with the post mortem report (Exhibit 3). Also, such confessional statement by the appellant has led to the recovery of the dead body of the victim and this alleged recovery based on the information provided by the accused is admissible under Section 27 of the Indian Evidence Act. The prosecution has also relied and pointed towards the statement of child witness under Section 164 of Cr.P.C. It was argued that the conduct of the accused is also pointing towards his guilt. The learned APP also submitted that the dead body of the deceased was found in a lonely place, which is also relevant and admissible in the eyes of law as it proves the occasion under Section 7 of the Indian Evidence Act based on which accused got the opportunity to commit the alleged offence. He further submits that the chain of circumstantial evidence has very well been proved by the prosecution. As such, there does not remain any hiatus in the chain of circumstances and that guilt of the appellants has been satisfactorily proved by the evidences adduced during the course of trial and there is no infirmity in the judgment of conviction of the learned trial Court.

8. After hearing the arguments advanced by the learned counsels appearing for the parties and upon thorough examination of the entire material available on the record, the issue that arises for consideration in the present appeal is:

Whether the Prosecution has proved the connecting chain of circumstances for holding the appellant guilty with the aid of Section 27 of the Indian Evidence Act?

9. From perusal of the record, we find that the present case is primarily based on the circumstantial evidence. In such cases, all the incriminating facts and circumstances should form a complete chain of evidence firmly pointing towards the guilt of the accused. The Hon'ble Supreme Court in the case of Bodh Raj and Ors. versus State of Jammu and Kashmir reported in (2002) 8 SCC 45 in para nos. 15 and 16 has observed that:

"15. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

16. In the case of Hanumant Govind Nargundkar and Anr. versus State of Madhya Pradesh, AIR (1952) SC 343, wherein, in para 10, it was observed: It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

Upon evaluating the case in hand, it was found that the appellant has disclosed the whole occurrence in his confessional statement (Exhibit 5) while he was in police custody. The appellant has confessed that he and one Jhamlal Giri has committed rape on the deceased and killed her by throttling her neck. He also specifically stated that he has thrown the dead body of the victim (deceased) in the wheat field of one Mahant Ji. Thereby, the Investigating Officer (PW 14) went to the wheat field of Mahant Ji in consequence of the information given by the appellant and recovered the dead body of the victim. At this juncture, it is relevant to take note of the Hon'ble Supreme Court in the case of Bobby versus State of Kerala reported in 2023 SCC OnLine SC 50 wherein this Court has taken the reference of case of State of Karnataka versus David Rozario and Anr. reported in (2002) 7 SCC 728 and held that:

"The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the Accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the Accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information."

Thus, in light of the above discussions, the exact information given by the accused which led to the discovery of dead body of the victim is a relevant fact

and a link in the chain of evidence against the appellant.

The attention of this Court has also been drawn towards the testimony of PW 4. It has been deposed by him in para no. 1 of his examination-in-chief that on the night of the alleged date of occurrence (i.e. 17.03.1995) around 7 p.m. to 8 p.m., when PW 4 went for eating paan from the betel shop, he had seen that the appellant was coming in a hurry from the field of Mahanth Ji. He has clearly stated in the same paragraph of his examination-in-chief that he has identified the appellant in the bulb light. In light of this fact, it is pertinent to take note that the victim went missing on 17.03.1995 around 5:00 p.m. and the appellant was seen by PW 4 on the same date around 7 to 8 p.m., near the field of Mahanth Ji from where the dead body was recovered in consequence of his confession. Thus, the alleged recovery of the dead body of the victim when seen in light of the testimony of PW 4, it creates an additional link in the chain of circumstances pointing towards the guilt of the accused.

Furthermore, it has also been deposed by PW 4 in his examination-in-chief that when he had seen that the appellant coming in hurry from the field of Mahanth Ji, he even asked the appellant that from where he is coming, but he did not reply, rather he sped out of there. It is also pertinent to take note that PW 2 in para no. 4 of his examination-in-chief has deposed that in course of searching the appellant, when they went to his house, they got to know that the appellant has not come home since the night of the alleged occurrence. The attention of this Court has also been drawn towards the testimony of PW 2, PW 5 and PW 11. It was deposed by all three above mentioned prosecution witnesses that later, during the course of search for the appellant, they found him sleeping on the machan of one maize field. These above-mentioned facts clearly indicate towards the conduct of the appellant that he was trying to escape and hide himself since the date of the alleged occurrence. Also, the alleged recovery of the dead body in consequence of the information given by the appellant is relevant under Section 8 of the Indian Evidence Act, in light of the observation made by the Hon'ble Apex Court in the case of A.N. Venkatesh versus State reported in (2005) 7 SCC 714 that even if the disclosure statement made by the accused found inadmissible under the ambit of Section 27 of the Indian Evidence Act still it is relevant under Section 8 of the Indian Evidence Act as conduct of the accused.

In light of the discussions made above and considering the factual background of the present case, the conduct of the appellant would also be a relevant fact as indicated in Section 8 of the Indian Evidence Act. Thus, such conduct of the appellant further furnishes the chain of evidence pointing towards the guilt of the appellant.

This Court has also taken into account the post mortem report (Exhibit 3) which clearly shows the evidence of sexual assault and rape on the body of the victim. Also, the doctor (PW12) has stated that there was fracture in the thyroid bone of the deceased and her death is caused by asphyxia due to throttling. Therefore, from the above-mentioned fact, it can be clearly deduced that the medical

evidences are also in corroboration with the alleged occurrence and it acts as a connecting link in the chain of facts and circumstances from which the conclusion of guilt of the appellant can be drawn.

10. The circumstances highlighted hereinbefore when combined together, they make a network of circumstances pointing only towards the guilt of the appellant and destroy the presumption of his innocence. Even the long arm of coincidence could not clear up the incriminating circumstances against him, rather these facts and circumstances form a complete chain to relate the appellant with the alleged offence.

11. When the judgment of the learned trial Court is analyzed in the factual backdrop of the present case of circumstantial evidence, we find that the impugned judgment does not suffer from any infirmity. We, therefore, find no reason to interfere with the judgment of conviction dated 16.05.2017 and the order of sentence dated 18.05.2017 passed by Shri Arvind Kumar Pandey, Additional Sessions Judge 2nd, Motihari, East Champaran in Sessions Trial No.473 of 1995/ 31 of 2017 arising out of Govindganj P.S. case No.23 of 1995.

12. Hence, the present appeal is dismissed.