

(2004) 12 PAT CK 0035
In the Patna High Court
Case No : Criminal A. No. 154 of 2001

Ranjay Kumar Choudhary and Another	APPELLANT
Vs	
The State of Bihar	RESPONDENT

Date of Decision : 06-12-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34, 376

Citation : (2005) CriLJ 1182 : (2005) 1 PLJR 277

Hon'ble Judges : Mridula Mishra, J; Manohar Lal Visa, J

Bench : Division Bench

Advocate : Nandan Prasad Singh, Manoj Kumar No. 1, Kaushal Kishor Singh and Ashok Kumar, for the Appellant; Lala Kailash Bihari Prasad, for the Respondent

Final Decision : Allowed

Judgement

Manohar Lal Visa, J.—This appeal is directed against the judgment dated 22-12-2000 and order dated 2-1-2001 passed by IInd Additional Sessions Judge, Khagaria in Sessions Trial No. 164 of 1997 convicting and sentencing both the appellants to undergo imprisonment for life and to pay a fine of Rs. 5,000/- each and in default to undergo further rigorous imprisonment for one year each under Sections 302/34 of Indian Penal Code (in short "IPC") and to undergo imprisonment for life under Sections 376/34 of IPC. Both the sentences have been ordered to run concurrently.

2. The case of prosecution, in short, as stated in Fard-e-bayan of informant Upendra Thakur (PW. 7), is that informant had grown maize and peas crops in one bigha of land in Gaura Gopi Bahiyar and one week before recording his Fard-e-bayan. he had raised a Bathan in which he used to keep his buffaloes and remained sitting there for day and night to look after his field and his both deceased daughters Bichiya Kumari aged about sixteen years and Sulekha Kumari aged about eight years used to bring lunch to his Bathan from his house and in the evening, they used to go back to their house. On 24-1-1996 at about 12 o'clock in the noon, his both aforesaid deceased daughters came to Bhathan

with his lunch and he then told them that he had already taken lunch by taking the same from his neighbour Jagdish Sharma and asked them to take that lunch. His both daughters took lunch and, thereafter, said that they had to go back to home for doing some house work as directed by their mother and he then asked his daughters to first scrap grass for buffaloes and, thereafter, go to home and his both daughters at about 1 PM went towards west of his Bathan for scrapping grass and he also went towards east in the field of Prabhas Rai for scrapping grass as ordered by Prabhas Rai. At that time, he saw appellant Ranjay Kumar Choudhary along with Pintoo Kumar and Nijna Choudhary sitting in the Bathan of Pintoo Kumar and talking with each other. About 11/2 hours thereafter, he returned to his Bathan and went towards west along with his buffaloes for washing them and, thereafter, when he again returned to his Bathan. he saw appellant Ranjay Kumar Choudhary and Nijna Choudhary going on fastly on a horse and he also saw Pintoo Choudhary coming hurriedly from the western side and sitting in his own Bathan, He further found that his daughters had not come back and he then thought that they might have gone to their house. On the same day at about 8 p.m. his son along with Kewal Mandal and Biddi Mandal came there searching for his daughters and told him that they had not reached the house and he told him that because it was night so he would make search for his daughters in the morning and told him to go back and make search in the village and house. His son along with aforesaid persons returned and on the next day in the morning, informant started making search for his daughters and went in the maize field of one Mukti Rai where he found his both daughters lying dead. Lace of Shalwar of his elder daughter Bichiya Kumari was found broken and she was lying in half naked condition with injuries on her private parts and her Shalwar was smeared with blood which had flown from her private parts and there were marks of strangulation and marks of piercing wounds by Chura near her right ear, above the eyes and cheek. Her frock and Shalwar were also found smeared with blood and blood that had fallen on soil and also on maize plants. He further found piercing injuries of Chura on all sides of right eye of his younger daughter and also on her neck and head and there were marks of strangulation on her body also and blood, after falling from her private part, had smeared on the ground. On seeing the dead bodies of both his daughters, he raised alarm on which a number of persons assembled. He was confident that Pintoo Kumar; Nijna Choudhary and appellant Ranjay Kumar, after committing rape on his both daughters, committed their murder by strangulation and assaulting them with Chura. His son Bipin Thakur (PW. 6) along with a number of villagers came there and his son told him that in village, people were confidentially talking that villagers had seen Nijna Choudhary and appellant Ranjay Kumar fleeing on a horse from Bahiyar with bloodstains on their bodies and clothes and had seen them washing blood-stains in the flow of water in Bahiyar. Information was sent to Atarkhand Outpost and when no body turned up from there, information was sent to Parbatta Thana. In Fard-e-bayan. informant claimed that Pintoo Kumar, Nijna Choudhary and appellant Ranjay Kumar @ Ranjayya, after committing rape on his both minor daughters, committed their murder by strangulation and

assaulting them with Chura. About the motive of occurrence, informant, in his Fard-e-bayan. has stated that on the day of occurrence in the morning, a stray mare had come to his Bathan and he had tied it but Pintoo Kumar had forcibly taken it away to his house and he had raised protest and on the same day at about 12.30 PM when Nijhna Choudhary and appellant Ranjay Kumar had come for taking that meare and when he asked them not to do so, they had given him threatening and they forcibly took away the mare.

3. On the basis of Fard-e-bayan of informant, a case under Sections 302, 201, 376/34 of Indian Penal Code was registered against Nijna Choudhary, Pintoo Choudhary and appellant Ranjay Kumar @ Ranjayya and police, after investigation, submitted chargesheet against them and also against appellant Prabhash Choudhary who was not named in the first information report. The trial of Nijna Choudhary and Pintoo Choudhary was separated vide order dated 28-07-1997 from the trial of both the appellants who, after trial, were found guilty under Sections 302/34 and 376/34 of Indian Penal Code and were convicted and sentenced, as indicated above.

4. The case of appellants before the Court below, as it appears from the trend of cross-examination of prosecution witnesses, is that they have been falsely implicated in this case.

5. In order to prove its case, prosecution examined nine witnesses. Jato Mandal (PW 3), Makunj Mandal (PW 4) and Madho Sao (PW 5). have not supported the case of prosecution and they have been declared hostile. Jato Mandal (PW 3) and Makunj Mandal (PW 4) have said that they know nothing about the occurrence and Makuni Mandal (PW 4) has said that his statement was not recorded before police. Upendra Thakur (PW 7) is the informant Bipin Thakur (PW 6) is the son of informant, Dr. Purushottam Kumar Sinha (PW 8) was one of the Doctors of the Board which had conducted post mortem examination on the dead bodies of both the deceased daughters of informant. Udai Pratap Singh (PW 9) is the Investigating Officer. Patwari Mandal (PW 1) and Koko Mandal (PW 2) are said to have seen both the appellants along with Pintoo Choudhary and Nijna Choudhary all carrying daggers with both the deceased daughters of informant in the field of one Mukti Rai.

6. Dr. Purushottam Kumar Sinha (PW 8) has said that on 26-1-1996, he was posted at Sadar hospital, Khagaria and on that day at about 9.50 AM, he along with Dr. A. K. Yadav and Dr. Shashi Sharma conducted post mortem examination on the dead body of Bichiya Kumari @ Bicho and found eight incised wounds of different sizes on different parts of the body such as right side of chest, near lower eye, mandible bone, right upper eye lid, right cheek, right side of temporal region of scalp, right side of the neck etc. along with some bruises and incised wounds were caused by sharp cutting weapons and remaining injuries were caused by hard and blunt substances and cause of death was haemorrhage and shock resulting from injuries and time elapsed since death was within forty eight hours from the time of examination. He has proved his post mortem examination

report which is marked as Exhibit-1. He has also proved post mortem examination report for deceased Sulekha Kumari which is marked Exhibit-1/1 but has said that this post mortem examination report of Sulekha Kumari is in torn condition. In cross-examination, he has said that they were finding of rape on Bichiya Kumari. The Court below from the torn post mortem examination report relating to deceased Sulekha Kumar has found that there were ten incised wounds on her person.

7. Upendra Thakur (P. W. 7), the informant, in his evidence, has said that on a day at about 12 O'clock, his deceased daughters Bichiya Kumari and Sulekha Kumari brought lunch for him in his Bathan and he then asked them to take the lunch because he had already taken lunch and when his daughters said that they would be back soon because they had been asked by their mother to come back soon due to some house work and they started taking lunch and then he went to the field of Prabhash Rai for scrapping grass. At that time, appellants Prabhash Choudhary and Ranjay Choudhary came there and started untying a horse and he asked them to put the rope properly on which appellant Ranjay scolded him and because they were armed with Chura, he did not say anything out of fear and went to the field of Prabhash Rai and when he came after two hours, he did not find his daughters and he then took his buffaloes to wash them in the water and about half an hour when he came, he saw that both appellants Prabhash Choudhary and Ranjay Choudhary were going towards south on the horse which they had untied from his Bathan and he then thought that his daughters might have gone to the house. He has further said that about 7-8 p.m., his son came informing that his daughters had not reached house and he then asked him that he will search them in the morning because at that time, it was night and in the morning of the next day, he started searching for his daughters and during that process of search when he reached maize field of one Mukti Rai situated one kilometer from his Bathan, he found his both daughters lying dead in half naked condition, laces of their Shalwars were broken and there were Chura injuries on the different parts of their body and it appeared that their necks had been pressed and there was swelling on the private parts of his both daughters. Book was also found fallen there. On his raising alarm, Patwari Mandal (P. W. 1), Koko Mandal (P. W. 2) and his son Bipin Thakur (P. W. 6) came there. Koko Mandal (P. W. 2) and Patwari Mandal (P. W. 1) told him that on previous day when they were coming to their house from Majma Dudhaila, they had seen both the appellants and Pintoo Choudhary assaulting his daughters with Chura and they, out of fear, ran away from there. He has said that he narrated all these facts to police. He has further said that he had no dispute with appellants,

8. Bipin Thakur (P. W. 6) is the son of informant. He has said that on 24-6-1996, his sisters Bichiya Kumari had gone to the Bathan of his father at 9 a.m. taking lunch but they did not come back till evening and he went to the Bathan and informed this fact to his father and his father asked him to make search in the village and further said that he would also make search in the morning. According to him, he made search for his sisters in the village but he did not find

them and in the morning, he proceeded towards the Bathan of his father and in the way, he met Koko Mandal and Pato Mandal who informed him that his sisters had been killed by both the appellants and Pintoo Choudhary by knives after committing rape on them in the field of Mukti Rai and he then went to the field of Mukti Rai where he found dead bodies of his sisters lying with knife injuries. Admittedly, neither informant (P. W. 7) nor his son Bipin Thakur (P. W. 6) is eye witness to the occurrence and their evidence against the appellants is based on the information which they received from Patwari Mandal (P. W. 1) and Koko Mandal (P. W. 2).

9. Patwari Mandal (P. W. 1) has said that one day at about 1.30-2 p.m., he was returning to his house from Dudhaila Majma and in the way when he reached near the field of Mukti Rai, he heard cries which was raised by some girls and he then along with Koko Mandal (P. W. 2), who was also with him, went towards the place from where cries were coming and there he found that four persons who were appellants, Pintoo Choudhary and Nijna Choudhary were assaulting two girls with fists and slaps and were also applying force. One girl was aged about ten to twelve years and another was aged about six to seven years and they both were the daughters of informant Upendra Thakur (P. W. 7) and appellants and their both companions were armed with Chura. According to him, he and his companion Koko Mandal (P. W. 2), out of fear, did not try to rescue the girls. He has further said that after coming to village, he came to know that daughters of informant had gone to Bahiyar in the morning and since then they were traceless and he then went to the house of informant but did not find any male member there and on the next day in the morning, he along with Bipin Thakur (P. W. 6) went to the place of occurrence where he found dead bodies of both daughters of informant and he then narrated the incident which he had seen on the previous day to informant Upendra Thakur. In para-6 of his cross-examination, he has said that the house of informant is situate adjacent west to his house and on the day when he had seen the occurrence, he found Bipin Thakur (P. W. 6) present in his house and he had some talks with him but he does not remember the subject of that talk. In para-19 of his cross-examination, he has said that Bipin Thakur had come to him and had told him that his sisters had been murdered and requested him to go with him to Bathan in search of his sisters and at that time, Koko Mandal (P. W. 2) and two to four other villagers were also there with Bipin Thakur and he, at the request of Bipin Thakur (P. W. 6) at about 7. a.m., went to Bathan along with Koko Mandal (P. W. 2) and other villagers. His statement in paras-6 and 19 of his evidence are quite contradictory to each other because at one place, he says that he had gone to the house of informant where he had some talk with Bipin Thakur but again says that Bipin Thakur had come to him and told him that his sisters had been murdered and requested him to go to Bathan with him. This evidence does not make it clear that how Bipin Thakur knew that his sisters had been killed because Bipin Thakur is not an eye witness to occurrence and he has said that he came to know from this witness that appellants were seen carrying daggers in a field with his sisters.

10. Koko Mandal (P. W. 2) has said that on a day at about 2 p.m., he along with Patwari Mandal (P. W. 1) was returning to his village from Dudhaila Majma and when they reached near the field of Mukti Rai in Gopi Bahiyar, they heard the cries of girls and they both went to the place from where the sound was coming and they found both the appellants along with this Pintoo Choudhary and Nijna were applying force on two girls who were daughters of informant Upendra Thakur (P. W. 7) and appellants and their companions were armed with Chura. He and Patwari Mandal (P. W. 1), out of fear, came back to village and did not make any attempt to rescue the girls and in the village, he came to know that the girls had gone to scrap the grass but they did not return and he and a number of villagers went to place of occurrence along with brother of girls where they saw both the girls lying dead. In para 8 of his cross-examination, he has said that his house is situate one house after the house of informant and there is house of Sarjug Mandal in between his house and house of informant.

11. The entire case of prosecution is based on the evidence of Patwari Mandal (P. W. 1) and Koko Mandal (P. W. 2) who are said to have seen appellants and their two companions armed with daggers and assaulting and applying force to both the deceased daughters of informant (P. W. 7) in the field of one Mukti Rai. They are not witnesses either on the point of rape by appellants on both the daughters of informant (P. W. 7) or on the point of their murder. Patwari Mandal (P. W. 1) has said that on the next day in the morning, he along with Bipin Thakur (P. W. 6) had gone to place of occurrence where dead bodies of both the girls were lying. Koko Mandal (P. W. 2) has said that on the next day in the morning, he along with Bipin Thakur and others had gone to the place of occurrence. He has simply said that in the village, he came to know that both the victim girls were traceless and he then went to place of occurrence along with brother of victim girls and a number of other persons. In para-7 of his cross-examination, Koko Mandal (P. W. 2) has said that on the next day, he had gone to the house of Bipin Thakur (P. W. 6) and a number of other villagers had also gone there but he did not remember their names and Bipin Thakur (P. W. 6) had told them that his two sisters, who had gone to scrap grass, had not come back. In para-8, he says that from there, he went to the place of occurrence along with Ram Rup Mandal, Bishundeo Mandal and others. He does not name Patwari Mandal (P. W. 1). Evidence of Bipin Thakur (P. W. 5) is that on the next day of morning when he was going towards Bathan, he met Koko Mandal (P. W. 2) in the way which is against the aforesaid evidence of Koko Mandal (P. W. 2) that he had gone to the house of Bipin Thakur (P. W. 6) and from there went to the place of occurrence. The evidence of Patwari Mandal (P. W. 1), that on the day when he saw the appellants, their companions and victim girls in the field of Mukti Rai, he had some talks with Bipin Thakur (P. W. 6) but he does not remember the topic of those talks, is not convincing. It does not come to reason that why this witness will not tell Bipin Thakur that on the same day, he had seen sisters of Bipin Thakur in a field surrounded by appellants and their companions. The evidence of Bipin Thakur that when he was going to Bathan on the next day in the morning,

in the way he met Patwari Mandal (P. W. 1) and Koko Mandal (P. W. 2) who told him that on previous day, they had seen both the deceased girls surrounded by appellants and their companions in the field of Mukti Rai also does not inspire confidence because after meeting these two witnesses, Bipin Thakur (P. W. 6) went to the field of Mukti Rai along with these witnesses where he found dead bodies of his sisters and also found his father present there. Upendra Thakur (P. W. 7), as stated above, has also said that when he saw the dead bodies of his daughters in the field of Mukti Rai and raised alarm, Patwari Mandal (P. W. 1), Koko Mandal (P. W. 2) and his son Bipin Thakur (P. W. 6) also came there and Patwari Mandal (P. W. 1) and Koko Mandal (P. W. 2) told him that they on previous day had seen the appellants and Pintoo Choudhary assaulting his daughters with Chura in the field of one Mukti Rai. In Para-6, he said that he narrated this fact to police but Fard-e-beyan of informant, which has been proved by Udai Pratap Singh (P. W. 9), who had recorded it and which is marked Exhibit-2, does not show that informant made any statement that Patwari Mandal (P. W. 1) and Koko Mandal (P. W. 2) had told him anything about his daughters. In the Fard-e-bayan, informant has stated that at the place where he found dead bodies of his daughters, his son along with a number of villagers came there searching the victim girls and his son Bipin Thakur told him that in the village, people were secretly talking that Nijna Choudhary and appellant Ranjay Kumar were seen fleeing away on a horse with blood-stains on their persons and clothes and washing those stains in the flow of water in Bahiyar. He in his fard-e-beyan has not stated that Patwari Mandal and Koko Mandal had told him anything about his victim daughters. Had Patwari Mandal (P. W. 1) and Koko Mandal (P. W. 2) met Bipin Thakur in the way when he was going to the place where dead bodies of victim girls were lying, he must, after reaching the place and finding his father there, have told him the information which he received from Patwari Mandal and Koko Mandal. Informant does not say that his son Bipin Thakur told him about the information which he had received from Patwari Mandal and Koko Mandal in respect of victim girls. It is strange and unbelievable that Bipin Thakur will tell his father that in the village, people were confidentially talking that they had seen Nijna Choudhary and appellant Ranjay Kumar running away with blood-stained clothes and marks of bloodstains on their person but he will not disclose him the information which he had received from Patwari Mandal (P. W. 1) and Koko Mandal (P. W. 2). Mr. Lala Kailash Bihari Prasad, learned Additional Public Prosecutor has argued that Patwari Mandal (P. W. 1) and Koko Mandal (P. W. 2) are rustic villagers and if they, out of fear, did not disclose the incidents which they had seen in the field of Mukti Rai on the same day in the village, their evidence cannot be disbelieved only on this account. I am not raising any doubt on the evidence of Patwari Mandal (P. W. 1) and Koko Mandal (P. W. 2) only on the ground that on the day when they saw victim with appellants and their companions in the field of Mukti Rai, they kept mum. This case, as stated above, is based only on the circumstance which has come in the evidence of Patwari Mandal and Koko Mandal because there is no direct evidence on the point of murder or rape. In a case of circumstantial evidence, prosecution must prove

such circumstances which, in all probabilities, must lead to the guilt of accused. Here, there is only one circumstance coming against appellants from the evidence of Patwari Mandal (P. W. 1) and Koko Mandal (P. W. 2). Had their evidence giving the solitary circumstance been free from all doubts, the matter would have, perhaps, been different but for the reasons given above, their evidence that they saw appellants and their companions with victim girls in the field of Mukti Rai, does not appear trustworthy. No doubt, offence of this case is very heinous because it is a case of ghastly murder and rape but in absence of any reliable evidence produced by prosecution, an accused cannot be held guilty however heinous a crime may be.

12. Considering the entire evidence on record, I find that prosecution has not been able to prove its case beyond all reasonable doubts against appellants.

13. In the result, this appeal is allowed and the judgment and order of Court below convicting and sentencing the appellants are hereby set aside.

14. The appellants, who are in custody, are ordered to be released forthwith if they are not required in any other case.