
(2019) 05 PAT CK 0016

Patna High Court

Case No: Criminal Appeal (DB) No. 1043 Of 2013

Bijendra Ram

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: May 6, 2019

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 374(2)
- Indian Penal Code, 1860 - Section 302

Hon'ble Judges: Rakesh Kumar, J; Anil Kumar Sinha, J

Bench: Division Bench

Advocate: Rajeev Ranjan, Ajay Mishra

Final Decision: Allowed

Judgement

1. The sole appellant, who was convicted in Sessions Trial No. 19 of 2010/663 of 2010 (S.J.), has filed the present appeal under Section 374 (2) of the

Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."™).

2. The appellant by judgment dated 30-09-2013 has been convicted for offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred

to as "I.P.C."™). By order dated 03-10-2013, he has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/-

(five thousand). In case of default in payment of fine, he has been directed to further undergo simple imprisonment for three months. The appellant

has been convicted and sentenced in Sessions Trial No. 19 of 2010/663 of 2010 (S.J.) by the learned Additional Sessions Judge Ist, Gaya (hereinafter

referred to as the "Trial Judge"™).

3. Short fact of the case is that on 16-06-2010 at about 5:00 P.M., Sub-Inspector of Police Ramakant Pandey (P.W.7) of Chandauti Police Station

recorded fardbeyan of Ravindra Prasad (P.W.6) son of Shree Chand Das of village Kastha, Police Station " Paraiya, District " Gaya. The

fardbeyan was recorded at the door of house of Surendra Das, resident of village Bitho, Police Station " Chandauti. In the fardbeyan, the informant

disclosed that he was a compounder of one Homeopathic Doctor and he was residing in Patna in a rented house since last three years. His daughter

Puja Kumar (deceased), aged about 14 years, was residing in the house of his (sarhu i.e. husband of his wife's sister) namely Surendra

Das and she was studying in Class V. On 16-06-2010 at about 11:15 AM, his daughter Puja Kumari from mobile phone of S.T.D. Booth gave a call to

the informant and told that the appellant was trying to outrage her modesty and she was very much perturbed and requested the informant to come

immediately. After getting this information, from village Kastha, he with his wife Rajani Devi (P.W.2), son Pankaj Kumar (P.W.3) and daughter

Guriya Kumari (P.W.4) came to the village Bitho and saw that his daughter Puja Kumari was lying dead in a room on the 2nd floor of the house of his

sarhu. He also noticed that there was swelling on her neck. He disclosed that his sarhu alongwith his family had gone to "Haridwar" a week ago

for the purpose of mundan of his son. The informant disclosed that he was having reason to believe that the appellant, by way of pressing the neck of

his daughter, has killed her and thereafter, fled away with his family. The said fardbeyan was read over to him and after finding it correct, he put his

signature.

4. On the basis of said fardbeyan on the same date i.e. on 16-06-2010 at 22.00 hours (i.e. 10:00 PM), a formal F.I.R., vide Chandauti P.S. Case No.

148 of 2010, was registered for offence under Section 302 of the I.P.C. against the appellant. After investigation, the case was found true against the

appellant and as such, on 10-09-2010 chargesheet was submitted. Before chargesheet, the appellant was already arrested. After submission of

chargesheet, on 18-09-2010, the learned Chief Judicial Magistrate, Gaya took cognizance of the offence and thereafter, the case was committed to the

court of sessions on 30-09-2010 and it was numbered as Sessions Trial No. 19 of 2010. On 22-12-2010, charge under Section 302 of the I.P.C. was

framed against the appellant, which was denied by him and he claimed to be tried.

5. The prosecution, with a view to establish its case, had examined altogether 8 witnesses. Out of 8 witnesses, the informant Ravindra Prasad (father

of the deceased) has been examined as P.W.6. P.W.2 Rajni Devi (wife of the informant and mother of the deceased), P.W.3 Pankaj Kumar (brother

of the deceased) and P.W.4 Guriya Kumari (sister of the deceased) had accompanied the informant to the village Kastha after getting telephonic call

from the deceased. P.W.1 Chhedi Ravidas is the maternal grand father of the deceased, who was present in the premises, where the occurrence had

taken place. He in his evidence has stated that after the occurrence, the appellant, after pushing him, had fled away. P.W.5 Satyendra Kumar was

running a S.T.D. Booth in the village Bitho and he deposed that on the date of occurrence, deceased had gone to his booth at about 11:00 AM and she

gave a telephonic call. P.W.8 Dr. Rajeev Ranjan Das had conducted post-mortem examination on the dead body of the deceased and P.W.7

Ramakant Pandey was the investigating officer of the case.

6. After completion of the prosecution evidence, on 20-05-2013, the appellant was questioned with incriminating circumstances and evidences brought

against him during the trial, in which, he claimed to be innocent. Besides claiming innocence, on behalf of the defence also, one witness was examined

namely Kaushalya Devi (mother of the appellant) and a defence was taken that the appellant was falsely implicated, as per instance of his own

brother, since the appellant was putting hurdle in unnecessary claim on the joint property of the family, whereas, the deceased had actually committed

suicide.

7. Sri Rajeev Ranjan, learned counsel for the appellant, after placing entire evidence, has argued that the prosecution has not been able to establish its

case beyond all reasonable doubt. He submits that the prosecution case appears to be suspicious due to the reason that though prosecution has come

out with a case that on the date of occurrence at about 11:00 AM, the deceased had given telephonic call from a nearby S.T.D. booth on the mobile

phone of the informant/P.W.6, the investigating officer had not bothered to collect Call Details Report (C.D.R.) of the said mobile and as such, the

prosecution has not been able to establish the fact that the deceased had given any telephonic call before the occurrence or not to informant.

8. Learned counsel for the appellant further submits that it is case of the prosecution that informant/P.W.6 had received telephonic call at about 11:15

AM, in which, he was informed by the deceased that appellant was trying to outrage her modesty, even then, in leisurely manner, the informant with

other witnesses proceeded for the village of the appellant much belatedly and this is the reason that they arrived in the village of the appellant in

between 2:30 PM to 3:00 PM. He further submits that though the informant reached the village Bitho i.e. village of the appellant in between 2:30 PM

to 3:00 PM and saw the dead body of his daughter, the informant without any explanation had sent message to the police after an hour and this is the

reason that the investigating officer in his evidence had stated that he had received information on the date of occurrence at 4:00 PM and thereafter,

he rushed to the place of occurrence.

9. Sri Ranjan, learned counsel for the appellant further submits that it is case of the prosecution that P.W.1 maternal grandfather of the deceased, who

was present in the premises where murder had taken place and he was pushed by the appellant while fleeing away after committing the crime, had

not bothered to inform anyone. P.W.1 in his evidence had stated that at about 11:15 or 11:25 he after hearing some sound of foot- step on the roof, he

awoke and thereafter, he was pushed by the appellant and he (appellant) fled away, but he had not bothered to inform anyone. It has lastly been

argued that as per evidence of investigating officer/P.W.7, besides examining witnesses, who have been examined during the trial, had examined

number of witnesses, but without any explanation, those witnesses were not produced during the trial. He submits that it appears that purposely the

prosecution had withheld the evidence of such witnesses. Accordingly, it has been argued that prosecution case appears to be doubtful and evidence is

not credible. Accordingly, as per Sri Rajeev Ranjan, learned counsel for the appellant, the learned Trial Judge has incorrectly passed the judgment of

conviction and sentence, which is required to be interfered with.

10. Sri Ajay Mishra, learned Addl. Public Prosecutor opposing the appeal has argued that the prosecution has been able to establish its case beyond all

reasonable doubt. He submits that it is case of the prosecution that the informant on the date of occurrence had received telephonic information from

the deceased, in which, she had requested her father to arrive immediately, since the appellant was trying to outrage her modesty. Sri Mishra submits

that it is true that some delay has occurred in reaching the village of the appellant, but fact remains that after getting such information, the informant

with his wife and children arrived at the village of the appellant and while they reached the house of sarhu of the informant, where the deceased was

residing and studying, her dead body was found in a room on 2nd floor. It was apparent that she was done to death by strangulation. According to Sri

Mishra, immediately thereafter police was informed and one hour delay, which has been argued by learned counsel for the appellant, has got not much

relevance in the facts and circumstances of the present case. He submits that police was immediately informed and thereafter, police arrived there

and fardbeyan was recorded. The evidence of informant has been corroborated by the evidence of P.Ws. 2, 3 and 4 that on the date of occurrence,

the deceased had telephonically informed regarding her apprehension.

11. Sri Mishra, learned A.P.P. has further argued that the evidence of P.W.1 Chhedi Ravidas (maternal grand father of the deceased) is also

sufficient to draw an inference that in the case, appellant had committed murder of the daughter of the informant. The chain of circumstances has

further been corroborated by the evidence of P.W.5 namely Satyendra Kumar, who was none else but co-villager of the appellant and in his evidence,

he has stated that he was running a S.T.D. Booth and on the date of occurrence, the deceased had come to his S.T.D. Booth and from there, she had

given a call. Those circumstances had further been corroborated by the medical evidence i.e. Ext.5 and evidence of P.W.8 Dr. Rajeev Ranjan Das,

who had conducted post-mortem examination on the dead body of the deceased. On the basis of aforesaid evidence, it has been argued that the

prosecution has established its case beyond all reasonable doubt and as such, the judgment of conviction and sentence may not be interfered with.

12. Besides hearing learned counsel for the parties, we have examined entire evidence on record, however; before coming to the conclusion, it is

necessary to discuss the evidence.

13. In the case, the informant/P.W.6 is the father of the deceased. In his evidence, he deposed that on 16-06-2010 at 11:15 AM, his daughter Puja

Kumari gave telephonic information that the appellant was trying to outrage her modesty and she immediately called the informant. At that very time,

he was at his house. He deposed that at that very time his daughter was living in village Bitho in the house of his sarhu Surendra Das. The informant

with his wife Rajani Devi (P.W.2), daughter Guriya Kumari (P.W.4) and son Pankaj Kumar (P.W.3) left his village Kastha for village Bitho. On the

same date at about 2:30 PM, he reached the house of Surendra Das, where he saw crowd outside the house. He went inside the room on the upper

floor, where dead body of Puja Kumari was lying on the floor. There was swelling on her neck. He further deposed that on the date of occurrence, his

father-in-law Chhedi Ravidas (P.W.1) was in the house and the informant was informed by P.W.1 Chhedi Ravidas that at about 11:00 AM, Puja

Kumari had served meal to him and after taking meal on the ground floor in a room, he slept there. Subsequently, he heard sound of foot steps as

“œ - œ and then he proceeded towards staircase, in the meanwhile, Bijendra Ram (appellant) and Panchu pushed him back and fled away.

Then he went to the room of the upper floor and saw the dead body. The informant further disclosed that subsequently, telephonically he informed

Chandauti police station and thereafter, police arrived at the place of occurrence and recorded his fardbeyan. He identified his signature on the

fardbeyan, which was marked as Ext.1. He also identified the appellant in dock. Police thereafter prepared inquest report and the inquest report was

marked as Ext.3. In cross-examination in paragraph 6, he reiterated that on the date of occurrence he was in his village Kastha and from there, he

left for Bitho village. He clarified that he had taken leave from the doctor (Homeopathic). He clarified that at the time when he got telephonic

information from his daughter he was at his house. In paragraph 7 of his cross-examination, he stated that at the time of occurrence, he was having a

mobile of Reliance company, however; he was not in a position to explain the number of said mobile. Surprisingly, in paragraph 8 of his cross-

examination, he has given the mobile number i.e. 9386173146, through which, his daughter had telephoned him. Fact remains that in the evidence, it

has come that his daughter from S.T.D. Booth from a mobile phone had informed her father (informant). Explaining the number of mobile of S.T.D.

booth and not remembering his own mobile number creates some doubt in the mind of the Court regarding credibility of the informant. He, further in

paragraph 10 of his cross-examination, stated that through ward commissioner Jitendra, he sent information to Bitho Police regarding the

occurrence. To the reasons best known to the prosecution, Jitendra has not been examined. In paragraph 11 of his cross-examination, he stated

that he had not disclosed before the police that only Chhedi Ravidas (P.W.1) was present in the house. In paragraph 13 of his cross-examination,

he admits that appellant is the own brother of his sarhu Surendra and one Panchu was also brother of Surendra. He has denied the suggestion that in

connivance with his sarhu Surendra Das, with a view to usurp the share of his brother Bijendra Ram (appellant), at the instance of his Sarhu Surendra

Das, he had falsely implicated him. He further denied the suggestion that on the date of occurrence, Chhedi Ravidas (P.W.1) was not present in village Bitho and he had given false evidence.

14. P.W.2 Rajani Devi (wife of informant/P.W.6 and mother of the deceased), P.W.3 Pankaj Kumar (brother of the deceased) and P.W.4 Guriya

Kumari (sister of the deceased) have deposed almost like P.W.6 (informant) that after getting telephonic information, they reached the village of the

appellant and saw the dead body and also reiterated that P.W.1 Chhedi Ravidas had explained as to how after committing the murder, the appellant

pushed him and fled away. Accordingly, there is no need to reiterate the evidence of P.Ws. 2, 3 and 4.

15. P.W.1 Chhedi Ravidas is the maternal grandfather of the deceased and he has been examined, as if, on the date of occurrence, he was present in

the house, where murder had taken place. In his evidence, he deposed that at about 11:15 AM, while he was sleeping in a room on the ground floor,

he awoke after hearing sound of footstep on the roof. In paragraph-1 of his examination-in-chief, he stated that when he got up from the bed, the

appellant with Panchu pushed him and fled away. However, in cross-examination, he deposed that after hearing the sound, while he moved on stair,

he was pushed by the appellant and Panchu and they fled away. Thereafter, he went inside room on the above floor and found the dead body of the

deceased. This witness was also given suggestion, as if, the appellant was falsely implicated as per the instance of sarhu of P.W.6 with a view to grab

the share of the property of the appellant, which was denied by this witness.

16. In this case, one Satyendra Kumar, owner of S.T.D. Booth, has been examined as P.W.5 and he has deposed to the extent that on the date of

occurrence, at about 11:00 AM, the deceased Puja Kumari through his mobile phone i.e. mobile no. 9386173167 had talked and he further stated that

on the same date, she died. His statement was also recorded by the police. In paragraph-3 of his cross-examination, he stated that police had not

taken any print out of his mobile number and he was also not aware as to whether his mobile was having facility of voice recording. He stated that he

had come to court alongwith Surendra Ji (sahu of P.W.6/informant) and he admitted that the appellant was the brother of Surendra Jee, however he

denied regarding the false implication.

17. P.W.8 Dr. Rajeev Ranjan Das on 17-06-2010 was posted in Anugrah Narayan Medical College and Hospital, Gaya and he conducted post-

mortem examination on the dead body of the deceased. In his evidence, he disclosed following facts:-

“Neck was swollen and congested. Externally ecchymosis of neck muscle and soft tissues seen, more on front of neck than on sides. There was

rupture of thyroid and cricoid cartilage, inward compression fracture of both side hyoid bones, compression of trachea with presence of petechial

haemorrhagic spots. There was presence of blood and blood clots in neck. All viscera were congested. As far as sexual assault is concerned faecal

matter and urine were seen around the genitalia. No marks of violence could be found anywhere on body, thighs or in and around a vagina. No

marking of pubic hair could be seen or any other evidence of seminal discharge.

2. Two samples of vaginal swabs were taken from posterior and lateral parts of vagina. They were shield and levelled in a glass test tube and were

sent to the department of pathology for histological and cytological examination immediately. Report from the department of pathology received on the

same day states “smear does not show presence of any alive or dead spermatozoa. Only a few benign looking squamous epithelium seen”.

So in the light of post-mortem examination and pathological examination of vaginal smear, there is nothing to suggest rape/sexual assault.

3. The above noted neck injuries were caused by manual strangulation/throttling.

4. Opinion

Death was due to shock, asphyxia and coma as a result of above noted throttling.

Time since death- within 6 to 18 hours from the time of post-mortem examination.”

18. P.W.8, in his evidence, has stated that the post- mortem report was in his writing and signature and same was proved and marked as Ext.5. In his

cross-examination, he categorically stated that there was no external injury of sexual assault nor in post-mortem examination, any fact could be

noticed suggesting that any attempt was made to commit rape on the deceased, however; in post-mortem examination, it was noticed that it was a

case of death due to strangulation.

19. P.W.7 Ramakant Pandey on 16-06-2010 was J.S.I i.e. Jr. Sub-inspector of Police in Chandauti Police Station. In his evidence, he proved

fardbeyan, which was in his writing and it was marked as Ext.2. He further proved inquest report as Ext.3 and formal F.I.R. as Ext.4. In his evidence,

he deposed that on 16-06-2010 at 4:00 PM, he got telephonic information that one lady (efgyk) was murdered. After getting such information, he

recorded sanha entry, vide sanha entry no. 277 and thereafter, alongwith armed forces, he rushed to the village Bitho and recorded fardbeyan of the

informant. In paragraph-3 of his evidence, he described about the place of occurrence, however on examination of his evidence, in paragraph-3, it is

evident that save and except the fact that dead body was lying in the room, no other incriminating material was noticed or collected by the

investigating officer. Thereafter, he prepared inquest report and dead body was sent for post-mortem examination. He returned back to the police

station and thereafter, formal F.I.R. was lodged. On examination of paragraph-5 of his evidence/cross- examination, it is evident that only one answer

was given by him and thereafter, his evidence was deferred, however; there is nothing on record to suggest as to whether he had appeared for his

cross-examination or not. In normal course, in a case in which, a witness is examined and he fails to turn up for cross- examination, his evidence is not

required to be taken note of.

20. On examination of entire evidence on record, the Court is of the opinion that the prosecution has not been able to establish its case beyond all

reasonable doubt for the reasons discussed hereinafter:-

(i) The informant, in the fardbeyan, had stated that with the family, he was residing in Patna, however; in the evidence, he has come out with a case

that at the time when he received telephonic information from his daughter, he was in his village Kastha. During evidence, it has come that the

distance between Kastha and the village of the informant was about 10 km., having road connection. It was case of the informant that he received

telephonic information from his daughter at 11:15 AM. He consumed more than about 4 hours and he arrived the village of the appellant, where dead

body was lying, in between 2:30 PM to 3:00 PM. Even thereafter, he did not bother to immediately inform the police and this is the reason that

investigating officer has stated that at 4:00 PM, he received an information that one lady was murdered. On the one hand P.W.6 (father of the

deceased) has stated that he himself had informed the police telephonically, however on the other hand the investigating officer is saying, as if, he had

got information regarding murder of a lady. Had it been a case that informant informed the police, then in that event, there was every possibility that

the informant would have stated that his minor daughter was killed. There is also no explanation why in informing the police, more than one hour was

consumed by the informant.

(ii) The involvement of the appellant appears to be doubtful due to the reason that the prosecution has come out with a case that P.W.1 (material

grandfather of the deceased) was staying in the same premises where the daughter of the informant was staying and he at 11:15 AM was pushed by

two accused persons namely Bijendra Ram (appellant) and Panchu. Had it been a fact, then it was expected that while informant reached the place of

occurrence, he would have been informed by P.W.1 that in the occurrence, two persons were involved, but to the reasons best known to the

informant/P.W.6, in his fardbeyan or even in his evidence, he has not whispered regarding involvement of Panchu.

(iii) It is case of the prosecution that informant was informed telephonically by the deceased on the date of occurrence, but to this extent, save and

except oral evidence, documentary evidence has not been brought on record. In such situation, it was the duty on the part of the investigating officer

to get the C.D.R. (call details report) of both the mobiles i.e. mobile of the P.C.O. used by the deceased as well as mobile of the informant. However,

no such material has been brought on record.

(iv) The prosecution is completely silent as to what was the reason that once name of Panchu had surfaced at 11:15 AM itself on the date of

occurrence, why Panchu was not arrayed as one of the accused in the F.I.R.

(v) It is also difficult to comprehend as to why more than four hours was consumed by the informant in reaching the place of occurrence, while in

evidence, P.W.6 and P.Ws. 2,3 & 4 are consistent that at 11:15 AM, the victim had telephonically informed and requested the informant to come.

21. All those circumstances are enough to draw an inference that the prosecution has not been able to establish its case beyond all reasonable doubt.

22. Accordingly, in view of evidence, as discussed hereinabove, by way of extending benefit of doubt, it is desirable to interfere with the judgment of

conviction and sentence and as such, the judgment of conviction dated 30.09.2013 and order of sentence dated 03.10.2013 passed in Sessions Trial

No. 19 of 2010/663 of 2010 (S.J.) {arising out of Chandauti P.S. Case No. 148 of 2010} by the learned Additional Sessions Judge- Ist, Gaya is,

hereby, set aside and appeal is allowed.

23. Since the appellant namely Bijendra Ram is in custody and the judgment of conviction and sentence has been set aside, it is, hereby, directed to

release him forthwith, if not wanted in any other case.