

Urmila Kunwar @ Urmila Devi Vs State Of Bihar

Court: Patna High Court

Date of Decision: Sept. 2, 2021

Acts Referred: Indian Penal Code, 1860 " Section 34, 302
 Code Of Criminal Procedure, 1973 " Section 173(2), 207, 313, 372

Hon'ble Judges: Ashwani Kumar Singh, J; Madhuresh Prasad, J

Bench: Division Bench

Advocate: Ramchandra Sahni, Ajay Mishra

Final Decision: Dismissed

Judgement

1. Heard Mr. Ramchandra Sahni, learned counsel for the appellant and Mr. Ajay Mishra, learned Additional Public Prosecutor for the State via video

conferencing.

2. By filing the present appeal under the proviso to Section 372 of the Code of Criminal Procedure, the appellant has challenged the judgment dated

28.06.2019 passed by the learned Additional Sessions Judge, Fast Track Court No.2, Siwan in connection with Sessions Trial No.560 of 2017 arising

out of Bhagwanpur Hatt P.S. Case No.157 of 2017.

3. By the aforesaid judgment dated 28.06.2019, the Trial Court acquitted the respondent no. 2 of the charge framed against him under Section 302

read with 34 of the Indian Penal Code (for short "IPC).

4. Mr. Ramchandra Sahni, learned counsel for the appellant submitted that the informant has fully supported the case of the prosecution. According to

him, the respondent no.2 was named in the first information report and during investigation, his culpability was found true by the investigating officer.

He contended that during trial, apart from the informant, P.W. 2, Rajesh Kumar Singh fully corroborated the prosecution case as narrated in the first

information report. He submitted that the investigating officer has proved the place of occurrence and the manner of occurrence. He contended that

though the case is based on circumstantial evidence, the law is well-settled that even in absence of any eyewitness to the homicide, conviction of the

accused persons can be sustained, if the chain of circumstance is complete. He urged that in the instant case, there was strong motive for the

respondent no.2 and the chain of circumstance would also suggest that it was the respondent no.2 who alone was responsible for causing the death of

the daughter of the informant.

5. Per contra, Mr. Ajay Mishra, learned Additional Public Prosecutor appearing for the State submitted that the Trial Court has committed no illegality

in acquitting the respondent no.2 of the charge levelled against him. According to him, most of the witnesses examined during trial turned hostile and

even the evidences led by the informant and P.W. 2 do not inspire confidence.

6. We have heard learned counsel for the parties and perused the impugned judgment.

7. The appellant is the informant of the case. She submitted her written report on 10.07.2017 to the Station House Officer, Bhagwanpur Hatt Police

Station stating therein that she had gone to her naihar at Sipah leaving her daughter Kiran Kumari aged about 18 years alone in her house. She alleged

that when Kiran Kumari was alone in her house, her uncle Hari Kishor Singh and his wife Anita Devi killed her on 09.07.2017 by tightening a rope

around her neck. She received an information in this regard at 6:00 a.m. on 10.07.2017. Immediately, she rushed to her house at Mahamadpur and

saw that a large number of her co-villager had assembled there. When she entered into her house, she found her daughter dead. She stated that she

had married her daughter recently on 04.05.2017. She further alleged that Hari Kishor Singh had not rendered any assistance in the marriage of her

daughter and he always used to threaten them of dire consequences.

8. On the basis of the aforesaid written report, Bhagwanpur Hatt P.S. Case No.157 of 2017 was registered against Hari Kishor Singh and Anita Devi

and investigation was taken up.

9. On completion of investigation, the investigating officer submitted a report under Section 173(2) of the Code of Criminal Procedure vide charge-

sheet no.221 of 2017.

10. Learned counsel for the appellant informed us that it was respondent no. 2 alone who was sent up for trial and the police did not find culpability of

Anita Devi during investigation. On perusal of the police report, the learned Jurisdictional Magistrate took cognizance of the offence and summoned

the accused Hari Kishor Singh to face trial.

11. After complying with the mandatory requirements of Section 207 of the Code of Criminal Procedure, the learned Jurisdictional Magistrate

committed the case to the Court of Sessions for trial.

12. The Trial Court framed charges under Section 302/34 of the IPC against the respondent no.2 to which he pleaded not guilty and claimed to be

tried.

13. During trial, altogether eight witnesses were examined on behalf of the prosecution.

14. P.W. 1 Dharmendra Rai, P.W. 3 Arvind Kumar Rai, P.W. 4 Hridya Rai and P.W. 5 Upendra Singh did not support the prosecution case in their

examination-in-chief. They were declared hostile by the Trial Court at the request of the prosecution. Out of the aforesaid hostile witnesses, P.Ws.-3,

4 and 5 have categorically stated that the victim Kiran Kumari had committed suicide. The prosecution did not cross-examine them after being

declared hostile. Thus, their evidence is of no help to the prosecution.

15. So far as Rajesh Kumar Singh (P.W. 2) is concerned, he stated in his examination-in-chief that on 10.07.2017 at 6:30 a.m. he received a call from

an unknown person from Mahamadpur, who told him that Kiran Kumari is not well. At that time, her Bua Urmila Kunwar was at his house. He

immediately took Urmila Kunwar to Mahamadpur on his motorcycle. On reaching there, he saw that Kiran Kumari was dead and there was ligature

mark around her neck. He stated that an injury was also found on her head. Thereafter, he informed his father. He stated that the local person, who

had assembled there told him that it was the respondent no. 2 Hari Kishor Singh and his wife, who had killed Kiran Kumari. He stated that thereafter

several persons from his village came to the place of occurrence. The police were informed. According to him, the police came and inspected the

place of occurrence and enquired from his Bua Urmila Kunwar. He stated that thereafter the body of the deceased was sent for postmortem

examination.

16. In cross-examination, he admitted that respondent no. 2 is full brother of the husband of the informant Urmila Kunwar. He admitted that the

husband of the informant Hari Shankar Singh had died about twenty years ago. He stated that after death of Hari Shankar Singh, his wife Urmila

Kunwar was offered a job on compassionate ground, but the family members dissuaded her by saying that a female of the family do not do job.

17. Urmila Kunwar (P.W. 6) stated in her examination-in-chief that she received information that her daughter is unwell at about 6:00 a.m. on

10.07.2017. At that time, she was at village Sipah and her daughter was in her house at Mohammadpur. She came to Mohammadpur and saw a huge

crowd. She found her daughter dead inside her house. Her body was kept on palang and besides her body, a rope was also kept. According to her,

there was a black spot on her head and mark of injury on her neck. She identified her signature on the written report submitted to the police, which

was marked as Exhibit-I.

18. In cross-examination, she stated that the respondent no. 2 Hari Kishor Singh is brother of her late husband. She stated that her husband was

employed in coal mines at Bangrapatti, Dhanbad. After his death, it was the respondent no. 2, who brought his body. She stated that she is blessed

with two daughters and a son. She further stated that she had gone to her Naihar at Sipah four days before the incident took place. She stated that her

daughter was married on 14.05.2017. She stated that in the marriage of her daughter, kanyadan was done by the respondent no. 2. She further stated

that when she had visited the police station, her brother Jagdish Singh, Harendra Singh and Awadhesh Singh were also present there and the bayan

which she had made, contained their signature also.

19. Dr. Ahmad Ali (P.W. 7) is the doctor, who conducted the post-mortem examination on the body of the deceased. He proved the post-mortem

report, which has been marked as Exhibit-2.

20. Umesh Kumar (P.W. 8) is the investigating officer of the case. He conducted investigation of the case and, on completion of investigation, he

submitted charge-sheet before the Court. He proved the formal FIR which was marked as Exhibit-3. He admitted that none of the witnesses whom

he examined during investigation had claimed to be an eye witness.

21. After examination of the aforesaid witnesses, prosecution case was closed and the Trial Court explained the incriminating material which had

come during trial against the respondent no.2 and recorded his statement under Section 313 of the Code of Criminal Procedure, the respondent no. 2

claimed himself to be innocent in the matter.

22. The defence did not lead any evidence in support of its case.

23. After closure of prosecution and defence case, the Trial Court heard arguments advanced on behalf of the parties and recorded the judgment of

acquittal. The Trial Court held that the prosecution had completely failed in proving the guilt against the accused.

24. On perusal of the entire materials on record, we find that admittedly, this case is based upon circumstantial evidence. There is no witness to the

actual murder of the victim Kiran Kumari at the hands of the respondent no.2. It is not in dispute that absence of any eye witness to the homicide

cannot come in the way of conviction of the accused persons where the crime has to be inferred from the surrounding circumstances. However, the

parameters and principles within which circumstantial evidence is to be assessed by the Courts to reach to a conclusion of guilt or otherwise has been

time and again deliberated upon by this Court and judgment in this regard are galore.

25. Precisely, to sustain a conviction on circumstantial evidence, the factual circumstances should be so established that only inference the said

circumstances allow must be that of the guilt of the accused, incompatible with any other hypothesis. The circumstances on record should form a

complete and consistent chain of events, which rule out other hypothesis except the guilt of the accused.

26. In the instant case, save and except, wild suspicion and hypothetical presumption, there is no other material on the basis of which it can be inferred

that it was the respondent no. 2, who had killed the daughter of the informant. Under such circumstance, if the Trial Court had acquitted the

respondent no.2, we find no reason to interfere with the impugned judgment.

27. Moreover, the parameters for dealing with an appeal against the judgment of acquittal have been laid down by the Supreme Court in several

cases. It is well settled that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his

innocence, the view which is favorable to the accused should be adopted.

28. Furthermore, in case of acquittal, there is double presumption in favour of the accused. Firstly, presumption of innocence is available to him under

the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court

of law, and, secondly, the accused having secured his acquittal, the presumption of innocence is further reinforced, reaffirmed and strengthened by the

Trial Court.

29. Having heard the learned counsel for the parties and with their assistance having gone through the findings recorded by the Trial Court, we are of

the opinion that the finding recorded by the Trial Court cannot be held to be erroneous or that there was any perverse appreciation of evidence.

30. For the reasons recorded hereinabove, the appeal is dismissed.