

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.868 of 2014

Arising Out of PS. Case No.-7 Year-2011 Thana- DURGAWATI District- Bhabhua (Kaimur)

1. Bhajan Kewat, son of Gurudeo Kewat
2. Rajesh Kewat, son of Naren Kewat
3. Yamuna Kewat, son of Late Somaru Kewat
4. Gurudeo Kewat, son of Late Doma Kewat

All residents of Village : Chipali, P.S. : Durgawati, District :
Kaimur.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Shri Vikramdeo Singh, Advocate Shri Sada Nand Roy, Advocate
For the Respondent/s	:	Shri Ajay Mishra, A.P.P.
For the informant	:	Shri Rajni Kant Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 19-03-2018

1. All the four appellants were convicted and sentenced in Sessions Trial No. 231 of 2011 by Shri Arun Kumar, learned Sessions Judge, Kaimur at Bhabhua (hereinafter referred to as the “trial judge”). All the four appellants by judgment dated: 20.09.2014 were convicted for commission of offence under Section 302/34, 201 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”) and by order dated 22.09.2014 under Section 302/34 of the I.P.C. were sentenced to undergo imprisonment for life and imposed fine of Rs. 15,000/- each and in



default of payment of fine, they were directed to further undergo rigorous imprisonment for six months. They were further sentenced to undergo rigorous imprisonment for three years for offence under Section 201 of the I.P.C. All the sentences were directed to run concurrently.

2.Short fact of the prosecution case is that on 13.01.2011 a complaint case vide Complaint Case No. 40 of 2011 was presented in the court of learned Chief Judicial Magistrate, Bhabhua. In the complaint petition the complainant – Vinod Kumar Kewat (P.W. 4) had arrayed all the appellants as accused and disclosed that on 27.12.2010 at about 5.00 P.M. the appellants had committed the offence under Section 302, 364, 364(A) of the I.P.C. The place of occurrence was shown as the village of the informant i.e. village: Chipali, Police Station: Durgawati, District- Kaimur. In the complaint petition informant disclosed that he along with his son -Arvind Kumar Kewat [deceased] had gone to participate in the *Shradh Karm* of the father of a co-villager Raja Ram where accused persons had also come. The complainant thereafter had returned back but his son had not returned back till late night whereupon the informant made search. Subsequently, on 09.01.2011 one letter was dropped near the door of the complainant in which it was mentioned that if by 13.01.2011 Rs.



1,00000/- is not paid, his son would be killed. He disclosed that when his son had gone to take meal in the *Shradh Karm* all the four aforesaid accused persons had also gone. Out of them, Gurudeo Kewat (appellant no. 4) had gone somewhere. From other three accused on 10.01.2011 the complainant enquired about his son but no proper reply was given and they too fled away. The informant was fully sure that from the house of Raja Ram his son was kidnapped by the aforesaid four accused persons for ransom and they were demanding Rs. 1,00000/-. Regarding the occurrence the complainant had given information to Police but Police did not lodge any case and thereafter he had come to court for filing the case. The said complaint was sent to the Police under Section 156(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C.") for registration , and thereafter, on 06.02.2011 a formal F.I.R. vide Durgawati P.S. Case No. 07 of 2011 was drawn for offence under Sections 364/ 34 of the I.P.C. against all the aforesaid four appellants. However, subsequently after noticing the death of victim, on 29.03.2011 Section 302/201 of the I.P.C. was added in the F.I.R. It is pertinent to mention here that after lodging F.I.R. on the next date i.e. on 07.02.2011 dead body was recovered. The case was investigated and during investigation accusation was found true and thereafter, on



31.03.2011 charge- sheet was submitted against all the four appellants for commission of offence under Sections 364/ 302/ 201/34 of the I.P.C., and thereafter, on 7.5.2011 learned Chief Judicial Magistrate took cognizance of offences. After completion of procedure under Section 207 of the I.P.C. the case was committed to the court of Sessions on 13.07.2011 and thereafter, it was numbered as Sessions Trial No. 231 of 2011. In the case on 09.08.2011 joint charge was framed against all the aforesaid four appellants for offence under Sections 302/34, 364 & 201 of the I.P.C.

3. During trial to establish the case from prosecution side altogether six witnesses were examined. Out of six witnesses, the informant (Vinod Kumar Kewat) was examined as P.W. 4, whereas two uncles of the informant namely: Bengali Kewat and Radhey Kewat were examined as P.W. 1 and P.W. 2 respectively and wife of the informant, who was also mother of the deceased Tetari Devi was examined as P.W. 3. Dr. Arvind Prasad who conducted post-mortem examination on the dead body of the deceased [Arvind Kumar Kewat] was examined as P.W. 6, whereas investigating officer Shri Rameshwar Singh was examined as P.W. 5. During trial the prosecution got certain documents exhibited, those are: complaint petition as Exhibit – 1,



signature of witnesses and informant on inquest report as Exhibit – 2, formal F.I.R. as Exhibit – 3, endorsement of S.H.O. on complaint petition as Exhibit – 4, inquest report as Exhibit -5, confessional statement of appellant no. 3 [Yamuna Kewat] as Exhibit – 6, confessional statement of Rajesh Kewat (appellant no. 2) as Exhibit – 7, confessional statement of Gurudeo Kewat (appellant no. 4) as Exhibit - 8, confessional statement of Bhajan Kewat (appellant no. 1) as Exhibit – 9 and post -mortem examination report as Exhibit No. 10. One letter relating to demand of ransom was got exhibited as material exhibit no. –X. After conclusion of prosecution evidence, on 06.12.2012 circumstances and evidences brought against the appellants were explained to them and on the same date i.e. 06.12.2012 their statement under Section 313 of the Cr.P.C. was recorded in which they claimed to be innocent. From the prosecution side no defence witness was examined.

4. Shri Vikramdeo Singh, learned counsel, assisted by Shri Sada Nand Roy, learned counsel for the appellants after placing entire evidences has argued that prosecution has miserably failed to establish the case of last seen of the victim with the appellants , and as such, the learned trial judge was not required to pass judgment of conviction. He has also argued that though the



prosecution case has proceeded as if dead body was recovered on the basis of confessional statement of accused persons, but fact remains that confessional statement of all the four appellants were recorded much after the recovery of dead body, and as such, even the confession of the appellants made before the Police to the extent of recovery of dead body has also got no relevance. It has further been argued that during trial prosecution has failed to establish regarding exact time of arrest of either of the appellants, nor any arrest memo was brought on record. Learned counsel for the appellants submits that on the date of recording of the so-called confessional statement none of the accused were produced before the learned Magistrate. Shri Vikramdeo Singh, learned counsel for the appellants by way of referring to Exhibit- 6, 7, 8 and 9 has argued that the so-called confessional statement before the Police was recorded in between 12.40 & 1.15 P.M. on 07.02.2011, whereas dead body was recovered in the morning and inquest report was prepared at 8.30 A.M. on 07.02.2011. As per Shri Vikramdeo Singh, learned counsel for the appellants since dead body was recovered prior to recording of confessional statement of the appellants no reliance can be placed on such confessional statement since it was made before the Police without showing recovery on such confession. In sum and substance it has



been argued that prosecution has miserably failed either to prove the case of last seen of the deceased with the appellants nor it has properly been established that dead body was virtually recovered on the basis of confessional statement of the appellants. Accordingly, it has been argued that the learned trial judge has incorrectly passed judgment of conviction and sentence, which requires interference.

5. Shri Ajay Mishra, learned Additional Public Prosecutor by way of referring to evidence of P.W. 5 (Rameshwar Singh) who was the investigating officer of the case, has argued that the investigating officer has categorically stated that appellant- Rajesh Kewat and Bhajan Kewat both were earlier apprehended and they made disclosure regarding concealment of dead body in a field and thereafter, Police along with the accused persons had proceeded for searching the dead body, as such, in the night itself search was conducted, however after great effort at the time of sun rise the place could be located which was a place in the field of one Vijay Tiwary and thereafter digging was made. The dead body was found buried in the field of Vijay Tiwary and thereafter dead body was recovered. The dead body was almost in decomposed condition and subsequently inquest report was prepared on the dead body on 07.02.2011 itself. It has been argued by Shri Mishra,



learned Additional Public Prosecutor that it is true that after recovery of dead body confessional statement of appellants was recorded, but fact remains that recovery of dead body was made on disclosure made by appellants, and as such, it cannot be said that dead body was located by Police itself without any information given by the appellants. So far the case of prosecution regarding last seen of appellants with deceased is concerned, he has specifically referred to deposition of the mother of the deceased i.e. P.W. 3 (Tetari Devi) and he has referred to paragraph no. 7 of her evidence and highlighted that Tetari Devi had lastly seen her son with the aforesaid four appellants near the *darwaza* of Sudama Kewat at the time when *Shradh* of Sudama was being performed. Besides this, Shri Rajni Kant Pandey, learned counsel who has appeared on behalf of informant has referred to the evidence of P.W. 4- informant (Vinod Kumar Kewat) who was the father of the deceased. He submits that the story of last seen of the victim with the appellants was corroborated by P.W. 1 (Bengali Kewat) as well as P.W. 2 (Radhey Kewat), whereas, P.W. 4 (Vinod Kumar Kewat-father of the informant) has also categorically stated that the appellants were seen with the deceased. Besides this, it has been argued that some time after the occurrence a letter was dropped near the door of the informant



from which demand of ransom was made. According to learned counsel for informant it was the appellants who had brutally killed the son of the informant due to non-fulfillment of ransom amount, however, he has not disputed the fact that during trial prosecution failed to establish the case of kidnapping under Section 364 of the I.P.C.

6. Besides hearing learned counsel for the parties, we have minutely examined the entire evidences i.e. both oral and documentary evidence. Before proceeding, it would be necessary to refer firstly to the evidence of informant (P.W. 4) namely Vinod Kumar Kewat. P.W. 4 [Vinod Kumar Kewat] deposed that on the date of occurrence he had gone to participate in *shradh karm* of Sudama Kewat. After taking meal he returned back but his son Arvind Kewat remained there. Along with him, appellant no. 1 [Bhajan Kewat], appellant no. 2 [Rajesh Kewat], appellant no. 3 [Yamuna Kewat] and appellant no. 4 [Gurudeo Kewat] were there. In the evening at about 6.00 P.M. his wife returned back after taking meal but till night his son did not return. Thereafter, at about 10.00 P.M. he started to search for his son Arvind Kumar Kewat. He along with others went to the houses of all the four appellants, however, they were found absent nor his son could be located. In the next morning he again went to the house of all the



four appellants. Thereafter, the informant was informed that the accused persons were not having any knowledge about his son. Thereafter, P.W. 4 returned back and he searched for his son. Subsequently, on 09.01.2011 early in the morning at 5.00 A.M. they noticed one letter over which it was written that if by 13.01.2011, Rs. 1,00000/- is not paid his son would be done to death. P.W. 4 further deposed that taking the said letter he went to Daroga Ji but he was scolded by Daroga Ji and ousted. Subsequently, taking the said letter he went to the Court and also produced the original copy of the said letter, which was marked for identification as Exhibit -X and he filed complaint petition. He also proved the complaint petition, which was marked as Exhibit - 1. In paragraph no. 5 of his examination -in-chief he stated that subsequently the Police arrested Bhajan Kewat, Rajesh Kewat, Yamuna Kewat and Guru Kewat and on their disclosure Police recovered dead body of his son from the field of one Vijay Tiwary. After hearing rumor he also went there and on the basis of clothes he could identify his son. He also put his signature on the inquest report, which was marked as Exhibit -2. In the dock also he identified all the appellants. In paragraph no. 8 of his cross-examination he stated that while he was returning after taking meal from the *shradh* ceremony lastly he had seen his son Arvind



Kumar Kewat at the house of Sudama. In paragraph no. 13 he further asserted that he had identified the dead body with clothes. Face, skin of neck of the dead body was decomposed and he remained there from where dead body was recovered for about two hours.

7. P.W. 1 (Bengali Kewat) is uncle of the informant. He in his evidence has stated that after taking meal in the *Shradh* Arvind [deceased] had gone with all the four appellants. Hectic search was made, however, after about eight days one letter was received in which demand of Rs. 1,00000/- was made and subsequently, Police arrested all the four appellants and on enquiry the accused disclosed to Police that dead body was buried in the field of Vijay Tiwary. Thereafter, Police went there and recovered the dead body. This witness was also cross-examined like P.W. 4, however, in cross-examination no cogent material could be extracted to draw serious doubt on his evidence. In similar manner, P.W. 2 [Radhey Kewat- uncle of the informant] has deposed. He too has stated that he had lastly seen the deceased with all the four appellants in the *shradh karm* and subsequently regarding the fact that a letter was found near the house of the informant wherein demand was made and thereafter the dead body was recovered from filed on disclosure made by the accused persons.



8. P.W. 3 [Tetari Devi] is the mother of the deceased. In her evidence she stated that near the door of Sudama on the date of occurrence she had seen her son sitting with all the four appellants. She further disclosed that in the next morning she had gone to the door of Bhajan Kewat [appellant no. 1] for enquiry about her son but no cogent information was given. In paragraph no. 3 of her evidence she stated that on disclosure made by the aforesaid four appellants after one month seventeen days from the date of occurrence dead body of her son was recovered from the field of Vijay Tiwary. She too identified all the accused persons in the dock. In paragraph no. 7 of cross -examination she stated that while she left for her house from the house of Sudama Kewat she had lastly seen her son with relatives of Sudama and all the aforesaid four appellants. In paragraph no. 11 she stated that in the month of “*Maagh*” dead body of her son was recovered. She also went with the Police to the place where dead body of his son was found. She further disclosed that from Police Station she had straightway gone to the place where dead body was found. She disclosed that she also had gone with the Police to the place where dead body was found. She further stated that Police from Police Station had straight way gone to the place where dead body of her son was found. On examination of her evidence and cross



-examination it is evident that no cogent material could be extracted to raise doubt on her evidence.

9. P.W. 6 namely Dr. Arvind Prasad was posted on 08.02.2011 as Professor & Head of Department, Forensic Medicine, A.N. Magadh Medical College, Gaya and at 1.00 P.M. he had conducted post- mortem examination on the dead body of Arvind Kumar Kewat and noticed following anti-mortem injuries:-

“1. Head was separated at the level of cervical six vertebra with the trunk. The separated ends have clean cut margin. A sharp cut of .5 MM was found over the body of cervical seventh vertebra upper end. The tissues at the Margin were jelly like and soft. Oesophagus and trachea were sharply cut and have clean cut margin which was soft, dark stains were present over soft tissues.”

He further deposed as follows:-

“2. The post mortem changes which occurred over the body of the deceased is mentioned at column No. 5 to 11 of the post mortem report. Time since death within 3 to 4 weeks. Cause of death is shock and haemorrhage by injury on neck by sharp cutting weapon.

3. The post mortem changes are average guilt, rigor mortis absent all over body, body in advanced stage of decomposition having colliquite liquification of tissues present. Maggots present, short black hairs posteriorly, teeth socket 14+2 unerrupted, forehead was inclined, sacrum was inclined, mandible was missing, all union at long bones ends were completed, penis absent, scrotum containing testis soften, first to six cervical vertebra missing, muscles on right leg absent, Tibia and Fibula exposed and separated, both feet absent, muscle and skin on lower end left leg was absent, bones were exposed, right upper limb absent, muscles over left forearm lower half absent, hands absents, bones exposed, ribs separated, all viscera soften and clumped and liquefied stomach soft and empty, brain absent, non union of skull sutures.”



He proved the post -mortem examination report, which was marked as Exhibit -10. In his cross- examination he disclosed as follows:-

“5. Differences between lacerated wound and incised wound is determined on the basis of the regular or irregular margin of the injuries. In incised wound there must be regular margin of the wound. In case of complete decomposition the character of margin is difficult to determine. In the present case the dead body was in advance stage of decomposition but not totally decomposed.

6. The decomposition starts in the body after 12 hours of the death and it takes 6 months to one year in skeletanisation and in open air it takes two to three weeks for complete decomposition of the skin of the dead body. If, the dead body is buried under the earth the rate of the decomposition will slow down. In between 18 to 24 hours the dead body starts to smell (foul smell).

7. If, the skin of the dead body is completely decomposed it is difficult to identify the dead body.”

10. Since it was a case based on theory of last seen of deceased as well as recovery of dead body of deceased on disclosure made by the appellants, it is necessary to deal with the evidence of the investigating officer, who was examined as P.W. 5. The investigating officer has proved the formal F.I.R., which was marked as Exhibit – 3. He also proved endorsement of S.H.O. on the complaint petition, which was marked as Exhibit – 4. He proved the inquest report, which was prepared on 7.2.2011 as Exhibit – 5. He further disclosed that after recovery of dead body he recorded confessional statement of all the four appellants. Confessional statement of Yamuna Kewat (appellant no. 3) was



marked as Exhibit -6, confessional statement of Rajesh Kewat (appellant no. 2) was marked as Exhibit -7, confessional statement of Gurudeo Kewat (appellant no. 4) was marked as Exhibit -8 and confessional statement of Bhajan Kewat (appellant no. 1) was marked as Exhibit -9. In paragraph no. 4 of his evidence the investigating officer stated that with a view to locate dead body of Arvind Kumar Kewat on the basis of disclosure made by Bhajan Kewat (appellant no. 1) and Rajesh Kewat (appellant no. 2) he proceeded to Southern Area of Chipali post for about ½ Kilometer after arranging torch light and in the field of Vijay Tiwary he started to search on number of places. Thereafter, on specific disclosures by the aforesaid two appellants, after much difficulty, he could locate the place where dead body was buried but till that time sunrise had already taken place and after noticing the Police villagers of Chipali village also gathered there and in their presence dead body was recovered which was buried in the field. The dead body was giving bad smell and it was in decomposed condition. On the basis of clothes which the deceased was wearing the dead body was identified by the informant (P.W. 4) and other villagers of the village: Chipali. He further deposed that on the date of occurrence itself with a view to conceal the evidence the accused persons after killing the



deceased had buried the dead body in the field of Vijay Tiwary. He proved the inquest report, which was marked as Exhibit -5. However, in his cross- examination in paragraph no. 11 he stated that on 07.02.2011 at 12.00 noon he formally arrested Bhajan Kewat (appellant no. 1) and Rajesh Kewat (appellant no. 2) and thereafter he started to record confessional statement of the appellants. In paragraph no. 13 of his cross- examination he stated that on 06.2.2011 at 12.45 he took up the investigation of the case and recorded statement of witnesses. In paragraph no. 18 he denied the suggestion that dead body was not recovered on disclosure made by the accused.

11. On examination of entire evidence the Court is of the opinion that the learned trial judge on the basis of evidence on record has not committed any error in passing judgment of conviction and sentence. Of-course, confessional statement which was recorded by the Police was got exhibited, but fact remains that said confession was made before the Police and it is also not in dispute that the said confessional statement was recorded after recovery of dead body, however, fact remains that in the evidence of P.W. 5 (investigating officer) it has come that on disclosure made by the appellants the dead body of deceased could be located and recovered from the field of one Vijay Tiwary. Since on



disclosure of the appellants dead body was already recovered, certainly subsequent confession that too before Police has got no relevance but recovery part on the basis of disclosure made before Police may not be treated as doubtful. Moreover, the story of last seen of the deceased with the appellants has elaborately been disclosed by P.W. 1, P.W. 2, P.W. 3 and P.W. 4 . Of-course, it has come that in *shradh* ceremony number of other people were there, but specifically the mother of the deceased (P.W. 3) as well as P.W. 4 have deposed that they had lastly seen the deceased with the four appellants, and as such, the case of prosecution regarding last seen with the deceased may not be considered as doubtful. On examining entire evidences, we are of the considered opinion that the learned trial judge has committed no error in passing judgment of conviction and sentence. The Appeal stands dismissed. The judgment of conviction and sentence in respect of all the four appellants is hereby approved.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24-03-2018
Transmission Date	24-03-2018

