

The State of Bihar Vs. Bilat Pandit

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Court : Patna

Decided On : Aug-27-2013

Appellant : The State of Bihar

Respondent : Bilat Pandit

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Death Reference No.4 of 2013 In the matter of Reference dated 12.02.2013 under Section 374 Cr.P.C. for confirmation of death sentence awarded to the convict and in the matter of an appeal under Section 374(2) read with section 389(1) Cr.P.C. against the

JUDGMENT / ORDER

dated 29.01.2013/ 6.2.2013 passed by Ad hoc Additional Sessions Judge- V, Vaishali at Hajipur in Sessions Trial No. 164/ 2009

===== The
State of Bihar Petitioner/s Versus Bilat Pandit ... Respondent/s With
Criminal Appeal (DB) No. 313 of 2013
=====

Bilat Pandit, son of Gorakh Pandit, resident of village - Giranganj Kumhar Toli,
Police Station - Sonapur, District - Vaishali Appellant/s Versus The State of
Bihar Respondent/s
=====

Appearance : For the Appellant : M/s. Raj Kumar, Niraj Kumar, Mritunjay Kumar,

Praveen Kumar, Advocates For the State : M/s. Ashwani Kumar Sinha, Shiwesh
Chandra Mishra, APP

=====

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA and HONOURABLE MR.
JUSTICE RAJENDRA KUMAR MISHRA ORAL

JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA) Date:

27. 08-2013 Instant death reference and the connected criminal appeal arise out of

JUDGMENT / ORDER

dated 29.01.2013/6.2.2013 passed by Ad hoc Additional Sessions Judge-V, Vaishali at Hajipur in Sessions Trial No. 164 of 2009 whereunder sole appellant has been convicted for the offence of committing rape, murder of Kajal Kumari, aged about 8 years, Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 2 daughter of informant and sentenced to undergo rigorous imprisonment for life under Section 376 I.P.C. as also to pay fine of Rs. 20,000/-. For the offence under Section 302 I.P.C. appellant has been awarded death sentence.

2. Prosecution case as set out in the fardbeyan of informant Sanjay Rajak, P.W. 4 recorded by S.I. A.K. Singh of Town P.S., Hajipur near Jagdamba Asthan, Bir Kunwar Singh Colony, Hajipur on 9.5.2008 at 11.30 P.M. is that informant is a washerman and is engaged in the job of washing, ironing of cloth by keeping wooden platform near the house of D.N. Singh. Near the aforesaid shop of the informant, in the house of Santosh Kumar Chaurasia, which is situate opposite the shop of informant, there was birthday party in which informant and his family members were also invited. In the evening at about 7.30 P.M. for attending the birthday party informant had called his daughter Kajal Kumari son Sujit Kumar, both came along with their maternal grand- mother, P.W. 2 to the shop of the informant, informant was engaged in ironing the cloth. At the same place wife of informant P.W. 6, another daughter Annu Kumari and sons Sujit Kumar, Ranjit Kumar (both not examined) were also present to attend the birthday party. At

about 8 P.M. servant of D.N. Singh i.e. appellant also came there and asked for Rs. 20/- from informant for drinking toddy, informant did not oblige in spite of his repeated request. Appellant returned to the house of D.N. Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 3 Singh. After sometime wife of D.N. Singh (not examined) also came out of her house and went to attend the birthday party. A little later appellant, aged about 28 years, came out of the house of his master again and asked Kajal Kumari daughter of informant to attend the birthday party along with him. At the behest of the appellant daughter of informant Kajal Kumari accompanied him for attending the dinner party. Informant further states that he was busy ironing the cloth and could not see in which direction they went. When the informant began to look for his children for attending the birthday party and when he came to attend the party could not find his daughter Kajal Kumari. In the birthday party appellant was also not found. The two were absent, enquiry was made from the people around but none could disclose about their whereabouts. Informant became perplex, anxious. On suspicion informant also looked for his daughter in the house of D.N. Singh but she was also not found there. At the second floor of the house of D.N. Singh appellant was present but appeared embarrassed. Informant enquired from the appellant about Kajal Kumari who replied that he is not aware about her and asked the informant to look for her in the orchard. Informant thereafter went towards orchard and other parts of the locality to look for his daughter but she could not be found. Informant without taking dinner in the birthday party went to his house at Chauhatta. At the house also Kajal Kumari was not found, entire family became anxious. Informant Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 4 and his wife, P.W. 6 again came to the birthday party and made enquiries but nothing could be learnt about Kajal Kumari. Mother in law of the informant, P.W. 2 was looking for her grand-daughter by lighting the torch. In course of search she also came to Kali Asthan and offered prayer. She came down from the temple platform, in torch light saw around the platform and found the deceased Kajal Kumari lying naked on her belly bleeding from her private part near the wall of D.N. Singhs house. Mother in law of the informant tried to lift her but having realized that she is dead began to cry. Informant also came running and saw his daughter dead. While the informant was coming to Kali Asthan running he saw appellant sitting at the gate of the house of

his master on a chair. Many persons residing in the locality collected near the dead body. While the informant and others were looking at the deceased appellant managed to escape. Informant claimed in the fardbeyan that appellant committed rape on his daughter Kajal Kumari, aged about 8 years and thereafter throttled her to death. The fardbeyan has been signed not only by the informant but also by his cousin brother in law Guddu Rajak, P.W. 3 and Sunil Baitha (not examined).

3. In the light of the fardbeyan, Ext. 1 Hajipur Town P.S. Case No. 254/08 dated 10.05.2008 for the offence under Sections 376/302 of the Indian Penal Code has been registered and Sub-Inspector Om Prakash of Hajipur Town P.S. was directed to investigate the case. Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 5 Investigating Officer having investigated the case submitted charge- sheet against the appellant of the aforesaid offences. In the light of the charge-sheet cognizance was taken and after supply of police papers case was committed to the court of sessions for trial. During trial prosecution examined altogether 9 witnesses, namely, P.W. 1 Nathuni Baitha father in law of the informant and maternal grandfather of the deceased. P.W. 2 Shakuntala Devi mother in law of the informant and maternal grand- mother of the deceased. P.W. 3 Guddu Rajak cousin brother in law of the informant. P.W. 4 Sanjay Rajak is the informant, father of the deceased. P.W. 5 Mintu Rajak brother in law of the informant. P.W. 6 Babita Devi wife of informant and mother of the deceased. P.W. 7 Dr. Amresh Kumar who conducted post mortem on the dead body of the deceased and proved the post mortem report, Ext.3. P.W. 8 Brij Bhushan Prasad, P.W. 9 Anil Tiwary are the two Advocate Clerks, formal witnesses who proved F.I.R., Ext. 4 and confession of the appellant, Ext. 6 respectively.

4. Before proceeding with the ocular evidence, it is proper to deal with the evidence of P.W. 7 Dr. Amresh Kumar who conducted post mortem on the dead body of deceased Kajal Kumari vide post mortem report, Ext.

3. From perusal of Ext. 3 as also the evidence of P.W. 7, it is crystal clear that the deceased was first raped and then throttled to death. The time of occurrence as indicated in the fardbeyan, Ext. 1 and time of death of the victim Kajal Kumari as found in the post Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 6 mortem

report do match, correspond and clearly indicate that deceased was first raped and then killed.

5. We now proceed to consider the ocular evidence brought on record by prosecution. P.W. 4 informant Sanjay Rajak has stated that the occurrence had taken place on 9.5.2008 at about 8.30 P.M. He further states in his evidence that he does his job of ironing cloth on a wooden platform in front of the entrance gate of the house of D.N. Singh. Opposite the house of D.N. Singh is the house of Santosh Chaurasia. In the evening of occurrence there was birthday party in the house of Santosh Chaurasia in which he was invited. In the same evening at about 7.30 P.M. informant had asked his son Sujit Kumar, Ranjit Kumar (both not examined) deceased daughter Kajal Kumari to come to his shop. When the children arrived at the shop appellant also came and asked his daughter Kajal Kumari aged about 8 years to come and attend the dinner party with him. Informant told the appellant that all his family members shall go together to attend the birthday party. Appellant then asked the informant that by the time he comes along with his family members to attend the party the daughter may fall asleep and took his daughter to the birthday party. Informant continued with his work of ironing cloth. After sometime informant and his other family members also went to join the birthday party but could not find his daughter. Informant and others began to search for her in the Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 7 neighbourhood. Appellant served as cook in the house of D.N. Singh and also resided there. Informant asked the appellant about his daughter in the house of D.N. Singh but he did not give any clear answer. In the meanwhile, mother in law of informant, P.W. 2 also began to search and reached Brahm Asthan which is contiguous to the house of D.N. Singh and found the daughter of the informant lying dead near the rear wall of the house of D.N. Singh. She was naked and there was bleeding from her private part. On alarm being raised by the mother in law, P.W. 2 informant also found her dead body in the same condition. At that time also appellant was found sitting near the new house of D.N. Singh. He, however, later managed to escape from the place of occurrence. Informant has stated in the fardbeyan, evidence that his minor daughter was enticed away by the appellant, who committed rape on her and then throttled her to death. Informant gave his fardbeyan near Jagdamba Asthan, which is also known as Brahm Asthan.

Fardbeyan was scribed by S.I. A.K. Singh attached with Town P.S. in presence of witness Guddu Rajak, P.W. 3 and Sunil Baitha (not examined). Informant proved the fardbeyan Ext.

1. S.I. who scribed the fardbeyan also prepared the inquest report by carbon process, which was also signed by the informant and proved by him as Ext.

2. In the light of the fardbeyan First Information Report of the present case was registered with direction to Sri Om Prakash, S.I. attached to Hajipur Town P.S. to investigate the Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 8 case. I.O. having not been examined F.I.R. has been proved by formal witness P.W. 8 Brij Bhushan Prasad Advocate Clerk vide Ext.

4. In paragraph 6 of the cross examination informant has accepted the fact that prior to the present occurrence he had not heard anything adverse about the credentials, antecedent of the appellant. In paragraph 7 of the cross examination informant states that appellant had taken his daughter at about 8 P.M., half an hour thereafter at about 8.30 P.M. informant and his other family members went to join the birthday party but could not find his daughter Kajal Kumari there. At about the same time appellant, however, was found sitting in the new house of D.N. Singh on a chair. In paragraph 11 informant accepts that dead body of his daughter was found at about 10-15 steps south from his wooden platform shop.

6. P.W. 6 Babita Devi is the wife of informant and mother of the deceased. This witness has also given similar evidence as that of the informant with the only exception that informants shop was organized on a push cart. She has also supported the part of the story in which the informant claimed in the fardbeyan that appellant earlier in the same evening asked for Rs. 20/- from the informant but informant did not oblige him. In paragraph 3 of the cross examination P.W. 6 has asserted that while she was waiting at the shop of her husband for going along with him and their children to join the birthday party appellant again came to the shop of her husband at about 8 P.M. and took her Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 9 daughter to attend the birthday party. The witness denied the suggestion that she did not make such statement before the Investigating Officer. Aforesaid denial according to learned counsel for the appellant could not

be confirmed as Investigating Officer of the present case has not been examined and according to learned counsel appellant has been seriously prejudiced because of non-examination of the Investigating Officer. We have perused the case diary statement of P.W. 6 wherefrom it appears that P.W. 6 did state in her police statement that appellant had come to the shop of her husband at about 8 P.M. and took the victim Kajal Kumari to attend the birthday party. It is, therefore, quite clear that P.W. 6 had stated in her police statement that appellant had come to the shop of her husband at about 8 P.M. and took her daughter to attend the birthday party and the contradiction referred to by the learned counsel for the appellant is not a contradiction at all, which was required to be confirmed from the Investigating Officer under Section 145 of the Evidence Act. In our opinion, aforesaid attempt of the learned counsel for the appellant was an attempt to seek corroboration of her police statement by the Investigating Officer which is not the requirement of law.

7. P.W. 1 Nathuni Baitha is the father in law of informant and maternal grandfather of the deceased. He has also confirmed that 1 years earlier at about 8 P.M. the occurrence has taken place when he Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 10 was at his house, his wife, P.W. 2 came to the house crying, informed him that appellant had taken their maternal grand-daughter to join the birthday party but in spite of hectic search she could not be found, whereafter P.W. 1 also went to the shop of P.W. 4 his son in law where his wife, P.W. 6 also met him and informed the witness that it is not known where appellant had taken Kajal Kumari. P.W. 1 also joined the search. Later dead body of the victim Kajal bleeding profusely was found near the rear boundary wall of D.N. Singh contractor which separates his house from Brahm Asthan. The dead body was brought near the house of D.N. Singh and search was made for the appellant who was found sitting in the house of D.N. Singh contractor. Brother in law and wife of D.N. Singh having learnt about the entire occurrence made the appellant disappear. In paragraph 6 of the cross-examination P.W. 1 has stated that his statement was recorded by the Investigating Officer during the night of the occurrence itself and he had stated before the Investigating Officer that he joined the search for tracing out Kajal Kumari along with his wife and went to the shop of his son in law where his daughter P.W. 6, son in law P.W. 4 informed him that appellant has made Kajal

traceless. He further claimed in court that he also informed the Investigating Officer that they were looking for the appellant, who was found sitting in the house of D.N. Singh contractor.

8. P.W. 2 Shakuntala Devi is the mother in law of the Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 11 informant who also joined the search for victim Kajal Kumari and it was she who first discovered the deceased lying naked near the wall of D.N. Singh, which separates Brahm Asthan and the house of D.N. Singh. Her evidence has been challenged by the counsel for the appellant on the ground that her evidence is of no use at all for the prosecution as P.W. 2 herself has accepted in paragraph 6 of her evidence that before giving her statement in court she never made any statement about the occurrence before any authority.

9. P.W. 3 Guddu Rajak is cousin brother in law of the informant who has stated in his evidence that he heard the alarm raised by his aunt, P.W. 2 about disappearance of Kajal Kumari and instruction to search for her. He further states that along with P.W. 2 the witness also went to the house of D.N. Singh near Jagdamba Asthan where P.W. 2, informant P.W. 4 informed him that they had to attend the birthday party at the house of Santosh Chaurasia in which appellant had taken Kajal Kumari along with him but she did not return. They further informed that on enquiry made from the appellant he told them that she might be found in the bushes around. P.W. 3 further confirmed that he and others began to search for the deceased in the bushes around and then found her dead body in a bush near the boundary wall of D.N. Singh contractor. There was bleeding from her private part. Dead body of Kajal Kumari was taken out from the bush and brought on the road. Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 12 From perusal of the evidence of P.W. 3 it appears that he learnt about the factum of Kajal Kumari having gone to the birthday party along with appellant. He is only an eye witness of the recovery of the dead body from the bush near the rear wall of the house of D.N. Singh contractor. In paragraph 5 of the evidence attention of the witness has been drawn towards the fact that he did not state before the police that he was informed by P.Ws. 2, 4 that appellant informed them that he is not aware about the whereabouts of the deceased and she be searched in the bush. It is submitted that aforesaid assertion of the witness in paragraph 5 of the cross

examination could not be verified by cross-checking such assertion from the statement made by the witness to the Investigating Officer after inviting his attention to such contradiction. It is submitted that attention of the witness having been drawn, which could not be confirmed from the Investigating Officer for his failure to appear in the witness-box, no reliance at all can be placed over the evidence of P.W.

3. In order to verify the aforesaid submission, we perused the case diary statement of P.W. 3 and found that he had not stated before the Investigating Officer in his police statement that he was informed by P.Ws. 2, 4 that they had asked the appellant about the whereabouts of Kajal Kumari and that he replied that he is unaware about her whereabouts and she may be searched in the bush.

10. P.W. 5 Mintu Rajak is the brother in law of the Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 13 informant. He has stated in his evidence that occurrence had taken place 1 year 11 months earlier when he had gone to the house of Santosh Lal for attending the birthday party. Earlier thereto appellant came to the work place of his brother in law and enticed his daughter Kajal Kumari to come along with him to attend the birthday party and took her to attend the party at about 8 P.M. P.W. 5 further states that he having come to the birthday party having not found her niece, asked the appellant as to where she has gone, appellant replied that she has gone in the western direction. The witness and others moved in that direction and found victim lying on her belly near the wall of D.N. Singhs house, blood was also oozing out from her private part and that she was dead. In paragraph 5 of his cross-examination P.W. 5 has accepted that having learnt about the fact that Kajal Kumari has gone along with appellant he came to the birthday party to look for Kajal Kumari but she was not found there. In paragraph 6 P.W. 5 further accepts that his brother in law P.W. 4 has told him that it was the appellant who has committed the offence and on that basis he has deposed in court. It is submitted by the learned counsel for the appellant that in the light of the evidence of P.W. 5 in paragraphs 5, 6 of his cross-examination, it is crystal clear that he is not a witness of any part of the occurrence and evidence given by him is on the basis of information gathered from his brother in law P.W.

4. 11. Having considered the aforesaid ocular evidence now Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 14 we are left with the two formal witnesses i.e. P.Ws. 8, 9 Brij Bhushan Prasad and Anil Tiwary both Advocate Clerks who proved the F.I.R., Ext. 4 and the confession of the appellant Ext.

6. 12. In the light of the prosecution evidence discussed above learned counsel for the appellant submitted that present conviction is based on circumstantial evidence as none of the prosecution witnesses have seen the appellant committing the overt act of rape and murder of the deceased. He further submitted that the chain of circumstances having not been connected with each other to prove the guilt of the appellant, it would be unsafe to maintain the conviction of the appellant as from the prosecution evidence, it does not appear that there is no other possibility of some other person having committed the crime. In this connection he referred to the evidence of informant, P.W. 4 Sanjay Rajak and submitted that from paragraph 2 of his examination in chief including the evidence of other prosecution witnesses i.e. P.Ws. 2, 6 it will appear that they have not seen the deceased going along with the appellant to join the birthday party as at the time deceased left the shop of the informant to join the birthday party informant as per statement made in fardbeyan was involved in ironing the cloth and could not notice as to with whom and in which direction deceased left. The other witnesses, P.Ws. 2, 6 present at the shop of the informant while Kajal left the shop though deposed in court that Kajal went to attend the Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 15 birthday party with the appellant but such assertion of P.Ws. 2, 6 is not worthy of credence as while prosecution party was searching for Kajal Kumari appellant was very much available and seen by P.Ws. 1 to 6 at different places in the vicinity of the place of occurrence but no suspicion was raised against him by the prosecution party though it is their categoric evidence that appellant told them that the victim Kajal Kumari be searched in the bush, orchard.

13. Learned counsel for the appellant also submitted that two sons of informant, namely, Sujit Kumar and Ranjit Kumar were also present at the shop of the informant at the time when the family members of the informant had collected in the shop for attending the birthday party and they having not been examined to

indicate as to with whom deceased went to attend birthday party, there is no evidence at all to connect the appellant with the deceased as he was never seen by any of the prosecution witnesses examined in court going to attend the birthday party with the appellant.

14. Learned counsel for the appellant next referred to the evidence of P.W. 5 Mintu Rajak brother in law of the informant who also attended the birthday party and had seen the appellant attending the birthday party. P.W. 5 claimed that he enquired from the appellant about the whereabouts of his niece Kajal and that the appellant informed him that she had gone in the western direction. In the light of the information Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 16 derived by the witness from the appellant, witness joined the search to trace Kajal Kumari. During the search P.W. 5 and others saw the appellant present at the house of his master D.N. Singh contractor but did not raise any suspicion against him.

15. Learned counsel then referred to the evidence of P.W. 3 Guddu Rajak cousin brother in law of the informant and submitted that he neither attended the birthday party nor was present at the shop. He only joined the search, as such, there is nothing against the appellant in the evidence of P.W.

3. 16. In the light of the aforesaid consideration of the evidence of prosecution witnesses learned counsel for the appellant submitted that only because the dead body of Kajal Kumari was found within the premises of Jagdamba Asthan near the rear boundary wall of D.N. Singh the master of appellant, appellant cannot be connected with the crime.

17. Counsel for the State opposed the submission but failed to explain as to why the Investigating Officer of the case was not examined to avoid any prejudice to the defence as also to confirm the contradiction in the evidence of P.W. 3 Guddu Rajak cousin brother in law of the informant before the court in paragraph 5 of his cross-examination that he did state before the Investigating Officer that he learnt from P.Ws. 2, 4 that appellant told them that they should search Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 17 for Kajal Kumari in the bush. It is, however, submitted by the counsel for the State that on account of failure of the Investigating Officer to come to the witness box, the statement made by P.W. 3

before the Investigating Officer could not have been confirmed but that does not mean that the prosecution has not been able to prove the charge, as from the evidence of other prosecution witnesses i.e. P.Ws. 2, 4 and 6 it is quite established that it is the appellant who had taken the deceased to attend the birthday party whereafter she went missing sometime thereafter her dead body was recovered at the instance of the appellant.

18. In the light of the rival submission made by the counsel for the parties, we examine the reliability of the evidence of the prosecution witnesses in seriatim. P.W. 1 Nathuni Baitha is the father in law of the informant and maternal grandfather of the deceased. He learnt about the occurrence from his wife P.W. 2, who after making search came back to the house and informed him that deceased Kajal who had gone to attend the birthday party along with appellant has become traceless and is not being found. Having learnt about disappearance of his granddaughter P.W. 1 also joined the search and found the appellant present during search. P.W. 1 has not stated as to with whom deceased Kajal had gone to attend the birthday party and at whose instance her dead body was recovered after about half an hour of her disappearance. In our view evidence of P.W. 1 about search undertaken to trace Kajal Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 18 Kumari is of no assistance to prove the prosecution case.

19. P.W. 2 Shakuntala Devi is the mother in law of informant and maternal grandmother of the deceased. According to P.W. 2 she was also present at the shop of her son in law when Kajal is said to have gone to attend the birthday party with the appellant. She has stated such fact categorically in her examination in chief. Later, when disappearance of Kajal became known P.W. 2 also joined the search by lighting torch and it was she who discovered the dead body of her granddaughter in the premises of Brahm Asthan temple near the rear wall of D.N. Singh contractor where she had come to offer prayer. The dead body was brought in front of the house of D.N. Singh and enquiry was made from the appellant. From the evidence of P.W. 2, it does appear that she had seen the deceased going along with the appellant. The dead body of the victim was also discovered by the witness from near the bush, wall of contractor D.N. Singh within the premises of Brahm Asthan. Evidence of P.W. 2 though sufficient in content but is fit to be

rejected on the ground that she deposed about the occurrence for the first time in court and not before the police as has been admitted by the witness herself in paragraph 6 of her evidence. The witness may have seen the deceased along with the appellant and discovered her dead body but it does not appear from her evidence as to why did she not record her statement before the Investigating Officer though P.W. 1 her husband Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 19 made his statement in the night of the occurrence itself, as such, it is highly unsafe to rely over her evidence in court.

20. P.W. 3 Guddu Rajak cousin brother in law of the informant has learnt about the occurrence from P.Ws. 2, 4 and 6, has also not seen the appellant taking the deceased to the birthday party. His evidence in paragraph 5 that he learnt from P.Ws. 2, 4 that appellant told them to search the deceased in the bush, having not been stated by P.W. 3 before the Investigating Officer, as would appear from his case diary statement, the prosecution case that during search for the victim it was the appellant who informed the prosecution party to search for her in the bush, becomes doubtful.

21. P.W. 4 Informant Sanjay Rajak has stated that he had called his two sons and daughter Kajal to his shop at 7.30 P.M., it further appears that while his family members including Kajal assembled near the shop to attend the birthday party appellant came there and persuaded the deceased to come along with him to attend the birthday party as she being a child was likely to sleep and took her along with him. P.W. 4 continued ironing the cloth. Aforesaid evidence of P.W. 4 is to be considered in the light of his statement in the fardbeyan, Ext. 1 that being engrossed in his job (ironing the cloth) could not see where did she go. At this stage, it is relevant to notice the evidence of informant in paragraph 11 of his evidence where he categorically admitted that his Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 20 shop is at 10-15 steps south of the place where the dead body was found lying. The occurrence having taken place between 8-8.30 P.M. dead body having recovered from a distance of 10-15 steps south of the shop of the informant, it is really difficult for us to appreciate that the informant despite being present at his shop in the vicinity could neither notice disappearance of her daughter from the shop nor did he see throwing of her dead body in the

vicinity 10-15 steps away from his shop. He also did not raise any suspicion against the appellant when he met the appellant in course of search in the house of D.N. Singh though appellant appeared perplexed.

22. P.W. 5 Mintu Rajak is the own brother in law of the informant who met the appellant in the birthday dinner and made enquiry about the deceased Kajal and learnt from the appellant that Kajal has gone in the western direction. From the evidence of P.W. 5 in paragraphs 5, 6 of his cross-examination, it is quite evident that he is not an eye witness of the occurrence and has deposed about the occurrence at the instance of informant, P.W. 4, as such, it is unsafe to rely over his evidence to maintain the conviction.

23. The prosecution case that the victim went along with the appellant at about 8 P.M. to attend the birthday party and he made her disappear is unworthy of credence as during the search for the victim all the prosecution witnesses i.e. P.Ws. 1 to 6 not only met the appellant Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 21 either in the house of D.N. Singh, venue of birthday party or in the vicinity of the place of occurrence but also asked him about the whereabouts of the victim and the appellant told the witnesses that he is unaware about her whereabouts and they should search for her in the bush/orchard, yet the prosecution party did not raise any suspicion against him in course of search. Such conduct of the prosecution witnesses is pointer towards the fact that they were not sure that victim Kajal Kumari had gone to attend the birthday party along with the appellant.

24. In view of our discussion in paragraphs 18 to 23 above about the merit/ reliability of the prosecution evidence of P.Ws. 1 to 6, we are satisfied that appellant herein cannot be connected with the heinous crime of rape, murder of Kajal Kumari, daughter of informant aged 8 years, deserves grant of benefit of doubt as prosecution evidence of P.Ws. 1 to 6 is not found reliable for the reasons indicated in paragraphs 18 to 23 above together with the fact that appellant was found available during search to trace Kajal Kumari either in the house of D.N. Singh contractor or in close vicinity of the place of occurrence by P.Ws. 1 to 6 but no suspicion was raised against him during search even though as per

prosecution witnesses themselves appellant had informed them that they should search for the victim in the bush/ orchard. Had he committed the crime he would have escaped from the Patna High Court D. REF. No.4 of 2013 dt.27-08-2013 22 place of occurrence no sooner the dead body of Kajal Kumari was thrown in the bush within the premises of Brahm Asthan near the rear wall of the house of D.N. Singh and appellant would not have been present during the search. The evidence of P.W. 3 adduced in court that P.Ws. 2, 4 were informed by the appellant that he is not aware about the whereabouts of Kajal Kumari and they should look for her in the bush cannot be relied upon as no such statement was made by P.W. 3 in his police statement, which fact we have confirmed by our self perusing the case diary statement of P.W.

3. 25. In the result, death reference is answered in negative. Impugned judgment/ order dated 29.01.2013/6.2.2013 passed in Sessions Trial No. 164 of 2009 is set aside. Appeal filed by the appellant is allowed. He is directed to be released forthwith, if not wanted in any other case. (V.N. Sinha, J) Rajesh/- (Rajendra Kumar Mishra, J)

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