

SUPREME COURT OF INDIA

Dauna Devi

Vs.

State of Bihar

(Arijit Pasayat and Asok Kumar Ganguly JJ.)

29.04.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the order passed by the Division Bench of the Patna High Court confirming conviction of the appellant who faced trial along with one Ran Lakhan Rai for offences punishable under Sections 302 read with Section 34 and Section 201 of the *Indian Penal Code, 1860* (in short `IPC'). Each was directed to undergo R.I. for life for the first offence and two years for the later offence.

2. The prosecution version as unfolded during trial is as follows: Siya Devi, the informant to this case and the mother of the deceased was married with Ram Lakhan Rai and from their wedlock the deceased Bhikhani Kumari was born. Thereafter her husband (Ram Lakhan Rai) fell in bad company and meted inhuman treatment to the informant, as a result of which she went to her father's place. In spite of the efforts made by the informant, there was no effect on her husband and finally on 9.2.1981 accused Ram Lakhan Rai threw her out of the house. Accused Ram Lakhan Rai married Dauna Devi, the appellant. Then the informant filed a criminal case in which Ram Lakhan Rai had absconded. The informant had also filed a case of maintenance under Section 125. Cr.P.C., against her husband and the appellant No.1 was ordered to pay maintenance but he did not comply with the order and the informant filed a Misc. case for its execution. Ext.9 is certified copy of the order of Misc. case No.8 of 1981 (Siya Devi vs. Ram Lakhan Rai) under Section 125 Cr.P.C. Thereafter accused Ram Lakhan Rai agreed to keep the informant and her daughter and he started keeping them and he pressurized the informant to withdraw the case which she had instituted. When the informant did not withdraw the case, accused Ram Lakhan Rai instituted a case on her witnesses Dr. Ambika Singh and Shital Sah for abducting the informant and her daughter to put pressure on her. On 26.7.1984 the informant went to her father's place and she left her daughter Bhikhani Kumari (deceased) in the house of her husband. On 31.7.1984 one Kishori Kumari informed her that her husband had either concealed her daughter, somewhere or murdered her. The informant came to her husband's house and searched for her daughter. On enquiry, she learnt from Bishuni Numar, Kishori Kumar (PW-4) and Ram Chandra Sah (PW-14) that the accused Ram Lakhan Rai, Bindeshwar Thakur, Ram Ekbal Rai and Mahadeo were talking among themselves to remove Bhikani so that the case which had been instituted for

kidnapping may not fail. Ram Prasad Rai and Ram Lochan Rai had seen the accused taking away a child aged about ten years alongwith others and Dauna Devi was following them and on enquiry Ram Lakhan Rai had told that he was taking away a child aged about ten years alongwith others and Dauna Devi was following them and on inquiry Ram Lakhan Rai told that he was taking Bhikani or curing her of snake bite and thereafter Bhikhani was not seen in the village. The trial court held that there were circumstances which clearly established the accusation. Accordingly, the conviction was made. In appeal, the High Court concurred with he view of the trial court and upheld the conviction. In support of the appeal, learned counsel for the appellant submitted that the only factor which the trial court and the High Court have taken note of is the alleged recovery of the dead body of the child from the house. The trial court and the High Court erroneously observed that the house where the dead body was recovered belonged to two accused persons. In the prosecution version from beginning is that the present appellant was having illicit relationship with the other accused. Learned counsel for the respondent supported the judgment of the High Court. In a case of circumstantial evidence it has to be conclusively established that the chain of circumstances lead to the only inference, that of guilt of the accused ruling out the possibility of involvement of any other person to be the author of the crime. In the instant case there was no evidence to show that appellant was the owner of the house and/or was staying in the house at the time of alleged incident. No question was put in this regard in the examination under Section 313 Cr.P.C.

3. In the instant case the circumstance highlighted by the trial Court and the High Court does not meet the requisite standard applicable to cases based on circumstantial evidence. All other circumstances including so called confession were disbelieved by the trial court and the High Court. Therefore, the conviction of the appellant as recorded cannot be maintained. The conviction is accordingly set aside. The appeal is allowed. The appellant be released on bail from custody forthwith if not required in any other case.