

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.202 of 2009

Arising Out of Sultanganj PS.Case No. – 270 Year 2001, G.R. No. 1619 of 2001, District- PATNA,
giving rise to Sessions Trial No. 441 of 2003

Nagendra Prasad, son of Ramroop Singh, resident of Village Rampur Lane
Musallahpur Hat, P.S. Sultanganj, District Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Smt. Nutan Sahay, Amicus Curiae

For the Respondent : Sushri Shashi Bala Verma, A.P.P..

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 31-03-2015

The solitary appellant is before us through the present appeal to challenge the judgment of conviction and order of sentence passed by the learned Additional Sessions Judge XI, Patna in Sessions Trial No. 441 of 2003 on 19th of January, 2009, by which the appellant was held guilty of committing the offence under Section 304-B of the Indian Penal Code and was directed to suffer rigorous imprisonment for life.

2. Some of the undisputed facts are as under:-

The deceased Sanju Devi was married to the appellant about six years ago from the day of occurrence and she had a son also who was about four years on the day of occurrence and who appears examined as P.W. 5, namely, Rahul Kumar alias Golu. Sanju Devi died of fatal injuries caused to her and on the day she received the injuries, she was in her matrimonial house. It is also undisputed that she had died in hospital where she was admitted after being injured and she was lying in the Emergency Ward of Patna Medical College Hospital.

3. The allegation which was made in the F.I.R. was that since after being married to the appellant, he along with his family members, who were not put on trial, were pestering the informant, the mother of the deceased to give a motorcycle and on that account Sanju Devi was being ill-treated and tortured also. There was a demand for a motorcycle and its non-fulfilment had strained the relationship between the couple so much so that there had been a case also and that Sanju Devi had come back into the family of the appellant and his family members only after the appellant had given a written undertaking before Sultanganj Police Station.

4. It was stated by the informant Kiran Devi (P.W.3) that on 7.12.2001 she was told by one Dippu (not examined) that she had a telephonic call and she sent her daughter Renu Kumari (not examined) to receive the call. Renu Kumari came back crying

to tell that one Keshava Jee (P.W.1) had given the call and had told her that the deceased was injured and lying in Emergency Ward of Patna Medical College Hospital. The informant went with her son P.W.2 Rakesh Kumar and found that Sanju Devi was lying unconscious in bed and she was being treated. The family members of Sanju Devi along with Keshava Mahta (P.W.1) were there and as soon as the informant reached there all the family members of the deceased left the hospital finally. P.W.1 had stated to the informant that on 6.12.2001 at about 6-7 P.M, the appellant had brutally assaulted Sanju Devi and he had brought her to Patna Medical College Hospital for her treatment whereafter she was informed about the incident. P.W.1 also left the hospital, thereafter.

5. The informant went to the matrimonial house of her daughter to find that all the family members were absent from there and she gathered from the neighbourers of the appellant that on 6.12.2001 this appellant had assaulted the lady by the stone slab which was used for grinding spices and that was the reason that Sanju Devi had been injured. The same fact was stated by P.W.5 Rahul Kumar alias Golu, the 5-year-old grand son of the informant, who happened to be the son of the deceased and the present appellant.

6. On these statements, the F.I.R. of the case was lodged and the investigation was taken up by P.W. 8 S.I. Umakat

Rai, who stated that he had recorded the statements of the witnesses and also prepared the inquest report with a copy of the F.I.R. and thereafter he took the investigation up. He inspected the place of occurrence. He had also seized the blood stained clothes by preparing the seizure memo. He had also inspected the room which was in occupation of the deceased and the appellant and had again recovered blood stained clothes from inside of it. After close of the investigation, he sent the appellant up for trial.

7. The defence of the appellant, as appears from his statement under Section 313 Cr.P.C., was that Sanju Devi had fallen from the roof top and had died of injuries caused to her on that account.

8. Eight witnesses were examined during the course of the trial. P.W.1 Keshava Mahta was a witness who had informed the informant Kiran Devi, P.W.3, about the incident and had also brought the deceased in an injured condition to the Patna Medical College and Hospital for her treatment. Rakesh Kumar (P.W.2) was the brother of the deceased, who had gone with his mother to verify the information given to his mother by P.W.1 and had seen his sister lying in a bed in Patna Medical College and Hospital. P.W. 3 Kiran Devi was the informant herself while P.W.4 Kishan Prasad was the father of the deceased. He had also stated on demand of motorcycle and ill-treatment of Sanju Devi on that

account and the further facts as regards the occurrence and the telephonic message given by P.W.1 in that respect. P.W.4 has also stated that he had also verified the truthfulness of the information and learnt from P.Ws. 1 and 5, namely, Keshava Mahta and Rahul Kumar alias Golu that it was this appellant who had hit the deceased with a stone slab and had killed her. P.W. 5 Rahul Kumar alias Golu was the son of the deceased and the present appellant and he appears to be aged about 5 years on the day of occurrence. P.W. 6 is the doctor, who had held post-mortem examination on the dead body while P.W. 7 Md. Fahiuddin was a witness to the seizure of blood stained cloths seized from the house of the present appellant. P.W. 8 S.I.Umakant Rai had conducted the investigation and had sent the present appellant up for trial.

9. The defence did not examine any witness.

10. It was contended by Smt. Nutan Sahay, learned Amicus Curiae that there was variance as regards the time of occurrence. As already stated, there was quite some delay in lodging the report. The submission was that the evidence of P.W. 5 Rahul Kumar alias Golu was not fit to be accepted, firstly, because he was a mere child of about 4-5 years and secondly, that he was in the custody of his maternal grand parents and there was every chance of the witness being tutored. It was contended that the varying facts on the manner of occurrence makes it very difficult to

fix up the liability upon the appellant with certainty. The submission, as such, was that the appellant deserved to be acquitted after being given benefit of doubt.

11. As against the above, Sushri Shashi Bala Verma, learned Additional Public Prosecutor submitted that the witnesses were consistent and there is no reason to discard their evidence. The manner of occurrence was also supported by the medical evidence which also overruled the defence proposition that the deceased had fallen from some height so as to sustaining injuries and had died on that account.

12. It was contended by Smt. Sahay that it was a belated and fabricated report which was lodged after due deliberation and consultation. In this connection Smt. Sahay was pointing out to the Court that the occurrence took place on 6.12.2001, sometime in between 6 and 7 P.M., but the fardbeyan was recorded on 11.12.2001 in Patna Medical College and Hospital and the very delay appears causing a serious set back to the prosecution story. In support of her contention Smt. Sahay was placing reliance on the decision of the Supreme Court in the case of **Thulia Kali v. State of Tamil Nadu reported in AIR 1973 SC 501**. It was contended that in spite of having come to learn about the incident, the mother of the deceased was wandering for about five days before she was set out to lodge a report. In the case of

Thulia Kali v. State of Tamil Nadu (Supra) the Supreme Court was highlighting the importance of F.I.R. and it was observed in paragraph 12 of the judgment as follows:-

"12. It is in the evidence of Valanjiaraju that the house of Muthuswami is at a distance of three furlongs from the village of Valanjiaraju. Police Station Valavanthi is also at a distance of three furlongs from the house of Muthuswami. Assuming that Muthuswami PW was not found at his house till 10.30 p.m. on March 12, 1970, by Valanjiaraju, it is not clear as to why no report was lodged by Valanjiaraju at the police station. It is, in our opinion, most difficult to believe that even though the accused had been seen at 2 p.m. committing the murder of Madhandi deceased and a large number of villagers had been told about it soon thereafter, no report about the occurrence could be lodged till the following day. The police station was less than two miles from the village of Valanjiaraju and Kopia and their failure to make a report to the police till the following day would tend to show that none of them had witnessed the occurrence. It seems likely, as has been stated on behalf of the accused, that the villagers came to know of the death of Madhandi deceased on the evening of March 12, 1970. They did not then know about the actual assailant of the deceased, and on the following day, their suspicion fell on the accused and accordingly they involved him in this case. First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay

in the lodging of the first information report should be satisfactorily explained. In the present case, Kopia, daughter-in-law of Madhandi deceased, according to the prosecution case, was present when the accused made murderous assault on the deceased. Valanjiaraju, step-son of the deceased, is also alleged to have arrived near the scene of occurrence on being told by Kopia. Neither of them, nor any other villager, who is stated to have been told about the occurrence by Valanjiaraju and Kopia, made any report at the police station for more than 20 hours after the occurrence, even though the police station is only two miles from the place of occurrence. The said circumstance, in our opinion, would raise considerable doubt regarding the veracity of the evidence of those two witnesses and point to an infirmity in that evidence as would render it unsafe to base the conviction of the accused-appellant upon it."

13. The above proposition of law has its own importance, but what we find is that the Supreme Court itself has taken divergent views on such matters. In the case of **Ram Jag v. State of U.P. reported in AIR 1974 SC 606** the Supreme Court was pointing out as to whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case must depend upon variety of factors. Even a long delay can be condoned if the witnesses have no motive to implicate the accused. On the other hand, very filing of the report is not an unmistakable guarantee of the truthfulness of the version of the prosecution. In the case of **Narottam Sigh v. State of Punjab reported in (1979) 4 SCC 505** Hon'ble Shri Justice V.R.Krishna Iyer, speaking for the Supreme Court observed in paragraph 3 as under:-

"3 .Descripancies do not necessarily demolish testimony; delay does not necessarily spell unveracity and tortured technicalities do not necessarily upset conviction when

the Court has had a perspicacious, sensitive and correctly oriented view of the evidence and probabilities to reach the conclusion it did. Proof of guilt is sustained despite little infirmities, tossing peccadilloes and peripheral probative shortfalls. The “sacred cows” of shadowy doubts and marginal mistakes, processual or other, cannot deter the Court from punishing crime where it has been sensibly and substantially brought home. By these guidelines, the conviction of the appellant must stand, although we do not detain ourselves to discuss the details of the evidence.”

14. There may be indeed several factors which could be influencing the delayed lodging of the report and those factors may be constituted by the most vital aspect of human behaviour and thought. Here in the present case, the informant was the mother of the deceased and she had been informed by P.W.1 about the incident of her daughter being brutalized by none else than her husband. The very information could have been enough to lodge a report, but what we find and what generally happens in such cases is that the lady was proceeding to Patna Medical College Hospital. to verify the truthfulness of the information. Having found there her daughter in the Emergency Ward, she was still not going to the Police Station to lodge a report rather she was attempting to gather more informations about the incident by contacting the neighbours of the appellant or making efforts to find out more facts from the family members of the appellant so as to going to the root of the matter. It may not be a matter of delay. In our opinion, it appears more a prudent course adopted by the informant that she was

meeting several persons, such as, the family members neighbours, etc. of the appellant only to ascertain the truthfulness of her daughter's injuries. She was going and proceeding further to gather informations. P.W. 3 appears to have applied all cares and cautions at her command so that she does not fall in error when she could lodge a report by giving the facts correctly relating to the occurrence by collecting facts so as to be in a position to place the truth for investigation by the police. In our opinion, she was playing safe than to rush up the matter. Further, the truth was that P.W.2 the son of the informant was moving around in the Mohalla so as to gathering the information and then only the informant was giving her statement to the police. We find it a purposeful-delayed-report so as to further stitch up the facts to create a story of eradicating implicating some innocent persons. The informant was indeed informed by P.W. 1 in the morning of 7.12.2001 and as such her anxiety after learning about the incident took her to different places so as to gathering information and the record does not indicate that any Police Officer had come to her prior to 11.12.2001 to take down her statement. The lady P.W.3 herself did not go to the Police Station, but that may not create an inference adverse to the genuineness of the prosecution version as was attempted to be done by Smt.Sahay during the course of her submissions. The cautious approach of the lady in gathering and

ascertaining facts before she had lodged the report was a very valid explanation as regards the delayed report.

15. Coming to the other evidence of the case P.W.1 had claimed that he had seen the incident and had himself come to intervene. His claim was castigated by Smt. Sahay by pointing out to us that the Investigating Officer while describing the neighbourhood of the house of the appellant, was not recording that the house of P.W.1 was also located in its vicinity. P.W. 8 S.I. Umakant Rai has stated as to whose houses were in the neighbourhood of that of the appellant. From paragraph 4 of his evidence it does appear that the house of this appellant had not been stated to be situated somewhere around the house of the appellant. However, P.W. 1 Keshava Mahta has stated that his house was situated about ten yards east of the house of the appellant and while sitting at his house he had seen the appellant beating up his wife and lastly, at 4 A.M. on 7.12.2001 he could hear some cry and moaning which had attracted him to come to the house of the appellant to find that this appellant had finally given the blow by the stone-slab to cause the injury to his wife. While being examined as P.W. 1 he was never suggested that his house was not situated as was described by him in his evidence and in absence of any serious challenge to the claim of the witness as regards his house and its situation, not being supported by the

evidence of P.W. 8 S.I. Umakant Rai does not make him an incompetent witness. He was a witness who had accompanied the deceased to the hospital and he remained there for quite some time as when P.W. 8 had arrived at the hospital, he was also present there along with other family members of the deceased who died and thereafter, the family members of the deceased disappeared from there while P.W.1 remained for some time and also went away. P.W. 1 has given description as to how the appellant assaulted his wife, the deceased, initially with danda or stick and subsequently by throwing the stone slab on her head so as to injuring her. His competence does not appear any longer in doubt after we had perused his evidence which was recorded during the trial.

16. So far as the evidence of P.W. 2 Rakesh Kumar is concerned, he has stated that his sister was lying in the hospital and that he accompanied his mother P.W. 3 Kiran Devi to the hospital to see his sister and further that the mother and son, i.e., P.Ws. 3 and 2 both had moved around so as to gathering informations about the real manner in which Sanju Devi had been assaulted. There dos not appear even any little doubt in the fact stated by the witness. The witness, like, his mother P.W.3 had stated that both of them were told by P.W. 5 Rahul Kumar alias Golu that his father had killed his mother Sanju. But, Rahul Kumar alias Golu being a

child of about five years does not appear stating that fact when he was examined as P.W. 5. That part of the evidence of P.Ws. 2 and 3 appears inadmissible due to having been told the name of the accused by P.W. 5. As regards the evidence of P.W. 5, we again had some hesitation in not accepting his trustworthiness as he was a child of five years. He could not give evidence is not what we say. He was naming after seeing the face of his father by his name so much so that he was not addressing his father by use of a word which is generally used by a child rather he was taking his name in pointing out the accused. He throughout, after the death of his mother, was in the custody of his maternal grant parents and there was always a possibility of such a child being tutored so as to naming the appellant which casts a doubt on the trustworthiness. It is not necessary, as per Section 118 of the Evidence Act that some preliminary questions be put to a child witness so as to test his capability as a witness, but generally the courts before doing that have to ascertain so as to satisfying themselves as to whether the child was matured enough to understand the implications of the questions so as to be in a position to reply them correctly. The learned trial Judge was requited to put questions to him so as to testing his competence and thus allowing him to be cross examined. Lack of procedure might be there in this behalf but the practice which has become a role of prudence of being satisfied on

the capacity of a child witness has become the part of administration of criminal justice and we do not see any reason as to why his evidence be accepted or used for establishing the case.

17. The father of the deceased, P.W. 4 Kishan Prasad was stating the facts of same nature which were stated by his wife P.W. 3 and his son P.W. 2, who were not eye witnesses to the occurrence. But, still they were witnesses who had given some evidence by telling that they had found injuries on the body of the deceased which were caused by some violent act as found by the doctor P.W. 6.

18. During the course of inspection of the place of occurrence P.W. 8 S.I. Umakant Rai found blood stained clothes in the room of the house of the appellant where the occurrence had taken place. He found the room locked but that was got unlocked and after inspection of the room he found copious blood and other blood stained clothes which were seized by preparing seizure list. Fall from the rampart or a roof top could not lead the victim into a room inside the house. Fall from the roof top is always in inner courtyard or outer part of the house. A room could not be such a place where someone could fall from the rampart of the house. These are the circumstances under which it could never be said that the lady had fallen from the rampart or roof top of the house. We find support to the prosecution version from the nature of the

injuries which were found by P.W. 6 Dr. Aru Kumar Singh. The Doctor was so definite in overruling the defence version and suggestion that no one could go beyond those evidence.

19. P.W. 6 Dr. Arun Kumar Singh, who held post-mortem examination, had found the following anti mortem injuries on the dead body of Sanju Devi:-

- (i) One contusion of 5"X3" size on the left side of Maxilla, forehead and skull and 2" left from mid line and 1 ½" in front of left ear.
- (ii) Multiple bruises of 1"X ½" to 3"X2" size on the right arm, right forearm, left shoulder and left leg.

On dissection P.W. 6 found haematoma under scalp and in front of left temporal region as also on the left side of occipital region. The left orbit was found fractured. While describing the fracture of left orbit, P.W. 6 stated that one linear fracture of 1 ½" length from left orbit to behind and 1 ½" left from mid line was found by him. There was massive subdural haematoma of brain and right side of bone of brain as also left frontal region of bone. In the opinion of the doctor the death was on account of the injury on the skull part of the deceased caused by some hard and blunt substance.

20. If we analyze the evidence of the Doctor P.W. 6 what we find is that the injuries were on the left side of face of the deceased as a result of which the orbit was fractured and the skull bones on the left side were also fractured as appears described by

P.W. 6 in his evidence. However, if we analyze the evidence of P.W. 6 as regards injury No.2, what we find is that both the injuries were on left lower limb of the deceased. If someone falls from some height or he tumbles down the stairs to come to the ground level he is likely to incur injuries both on the arms and the lower and upper limbs. The deceased received injury also on her shoulder. These are some of the circumstances which are appearing from the evidence of the doctor P.W. 6 which indicates otherwise than what was suggested by the defence or which was stated by the appellant in his statement under Section 313 Cr.P.C.

21. The deceased was none else than the wife of the appellant. We have enumerated some of the undisputed facts and during that course we have noted that the deceased was residing with the appellant in his house. We have the evidence of P.W. 8 the Investigating Officer. He had found blood stained clothes not only in the part of the room of the house, but also from the room. Blood was found inside the room as appears from the evidence of P.W. 8 Smt. Sahay was criticizing the evidence of seizure of blood by submitting that none of the seized blood stained articles were produced in court nor they were sent for chemical analysis. We are of the view that inapt handling of investigation may not accrue any benefit to the accused. The clothes were seized, blood was found at the place of occurrence is evidenced by P.W. 8, who also produced

the seizure memo. Thus, the whole scenario which could be emerging from the evidence could be making the case of special knowledge as regards the appellant who happened to be the husband of the deceased which could attract the provision of Section 106 of the Evidence Act. Being the husband and being in full control of the house and also in the company of his wife, the appellant had to give proper explanation as to how his wife happened to have those injuries which ultimately proved fatal to her. No convincing and plausible explanation was coming from the appellant.

22. After having analyzed the evidence available on record and after having considered the materials, we are of the view that the learned trial Judge was right in passing the judgment of conviction and order of sentence. We might have reasons different from him, but on an analysis of the evidence available on record, we find that the appeal appears not meritorious..

23. In the result, the appeal is dismissed. The judgment of conviction and order of sentence are hereby upheld.

24. Smt. Nutan Sahay, learned Amicus Curiae very persuasively and tenaciously addressed her arguments to us. We found her not leaving any stone unturned so as to assisting us in reaching the appropriate decision. We appreciate her endeavours and recommend to the Patna High Court Legal Services

Committee to pay to her one fee of hearing. For that purpose, let a copy of first and last pages of the judgment be made over to her.

(Dharnidhar Jha, J)

(Amaresh Kumar Lal, J)

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