

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No. 257 of 2006**

Arising out of P .S. Case No. 42 Year - 2000 Thana - Khanpur District - SAMASTIPUR

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Dhongal Ram, Son of Buchi Ram, resident of village-Hasanpur, P.S. Khanpur,  
District-Samastipur.

.... .... Appellant

Versus

The State of Bihar

.... .... Respondent

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**Appearance :**

For the Appellant : Shri Arun Kumar Tripathi, Amicus Curiae.

For the Respondent : Shri Abhimanyu Sharma, APP.

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**CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA**

**and**

**HONOURABLE SHRI JUSTICE GOPAL PRASAD**

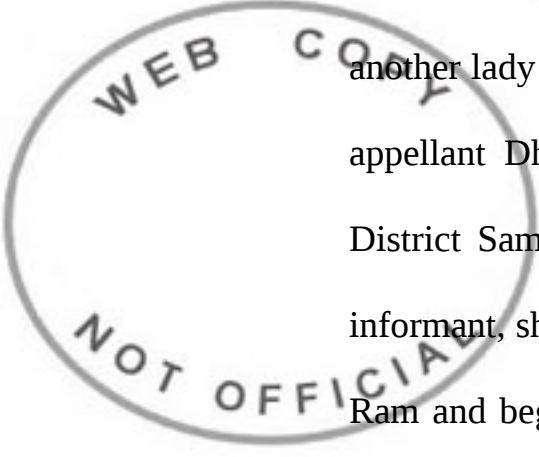
**ORAL JUDGMENT**

**(Per: HONOURABLE SHRI JUSTICE GOPAL PRASAD)**

**Date: 03-02-2015**

This appeal is directed against the judgment of conviction dated 10.01.2006 and order of sentenced dated 13.01.2006 passed by Shri Diwakar Mishra, learned Additional District & Sessions Judge, Fast Track Court No. V, Samastipur in Sessions Trial No.338 of 2001/314 of 2004 arising out of Khanpur P.S.Case No.42 of 2000 dated 03.09.2000 by which he has convicted the sole appellant for the offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. The prosecution case as alleged in the first information report by the informant, namely, Nirmala Devi, wife of appellant Dhongal Ram is that her first marriage was solemnized with one Budhan Ram of Samastipur district by which she was blessed with a



female child but Budhan Ram left the informant and re-married with another lady and then informant performed her second marriage with the appellant Dhongal Ram, resident of village Hasanpur, P.S. Khanpur, District Samastipur. The further case is that after the marriage of the informant, she went along with her child to her second husband Dhongal Ram and began to live with him. It is further alleged that on Saturday, one day prior to the lodging of the First Information Report, when her husband was at the house, she went outside and when returned at about 2:00 P.M., she did not find her husband and daughter. At 4:00 P.M. when her husband returned to the house she enquired about her daughter from her husband then he disclosed that the child has been sent to her *Mausi*. However, on repeated request to bring the child, the appellant at about 6:00 - 7:00 P.M. came along with the girl child in dead state and kept her on the *Darwaja* and disclosed that he has killed the female child and concealed. She alleged that her husband has killed the child.

3. The *fardbeyan* of the informant recorded at 12.30 hours on 03.09.2000 at the door of appellant Dhongal Ram and on that basis the First Information Report was lodged. During investigation, police recorded the statement of the witnesses and got the post mortem examination of the victim-child conducted by the Medical Officer and after completion of investigation, submitted charge-sheet on which cognizance was taken. The case committed to the Court of Sessions.

During trial eight witnesses were examined by the prosecution. However, neither the informant nor the Investigating Officer has been examined in this case. The doctor has been examined as P.W.7 who has opined that the post mortem conducted on 04.09.2000, time elapse since death is 36 hours and the injuries are two bruises on the chest and upper part of side of neck below left ear and on dissection of chest there is fracture of all the ribs with laceration of both lungs and plura.

4. However, the other witnesses examined are P.W. 1 Yogendra Ram, P.W. 2 Jalo Ram, P.W. 3 Lakhan Paswan, P.W. 4 Bhikhar Ram, P.W. 5 Jeevachh Ram, P.W. 6 Janak Ram and P.W. 8 Awadhesh Singh.

5. P. Ws. 1 and 2 in their evidence have stated that they learnt about the murder of the child (daughter) of Nirmal Devi by Komal Ram but have not stated that from whom P.Ws. 1 and 2 learnt about the murder. The informant Nirmal Devi has not been examined as a witness. Hence, evidence of P.Ws. 1 and 2 is hit by hearsay. P.W. 3 has been declared hostile. P.W. 4 has also stated that he heard the sound of weeping of the informant near the dead body of the child-victim and was saying that appellant Dhongal Ram has done to death the victim. P.W. 5 has also stated that he learnt about the murder of the child from others. P.W. 6 has stated that on *hulla*, he saw the dead body. Hence, the evidence of P.Ws. 5 and 6 also hit by hearsay. The police reached there

and made *Punchnama* of the dead body on which he signed. P.W. 7 is the doctor. P.W.8 has formally proved the signature of the informant on the *fardbeyan*.

6. Hence, taking into consideration the entire evidence, it is apparent that there is no legal evidence regarding implication of the appellant and the evidence of the witnesses P.Ws. 1, 2, 5 and 6 are hit by hearsay as mentioned above. P.W. 3 is hostile witness and P.W. 8 is formal and evidence of P.W. 7 is only corroborative. Hence, there is no iota of legal evidence regarding the implication of the appellant.

7. Hence, taking into consideration the entire evidence and having regard to the fact that there is no iota of legal admissible evidence regarding the implication of the appellant, the judgment of conviction and order of sentence recorded by the learned trial Court is not sustainable. However, the learned trial Court misdirected itself to hold that the said hearsay evidence is admissible under Sections 6, 7 and 8 of the Evidence Act. However, the case of the prosecution in the First Information Report itself is that when the informant returned to her house at about 2:00 P.M. then her husband was not in the house and when her husband came in the house at 4:00 P.M. she enquired from her husband about her child then he disclosed that he had sent the child to her *Mausi* and when she asked to bring the child he brought a dead body of the girl at about 6:00-7:00 P.M. and disclosed that he has killed the

child and concealed it then she wept and disclosed about the occurrence.

However, the informant herself was not an eye-witness to murder and so this part of evidence is not admissible as the informant herself has not been examined. Hence, in no fit of imagination, it can well be said that the evidence is admissible under Sections 6, 7 and 8 of the Evidence Act.

However, the evidence adduced is hit by hearsay and, hence, the learned trial Court is misdirected itself in convicting the appellant on the basis of those evidence holding admissible under Sections 6, 7 and 8 of the Evidence Act. Hence, we are of considered view that the prosecution has not been able to prove the charges beyond all reasonable doubt. Hence, we acquit the appellant of the charges levelled against him and the appeal is allowed. The appellant who is in jail ordered to be released forthwith, if not wanted in any other case.

**(Dharnidhar Jha, J.)**

**(Gopal Prasad, J.)**

Brajesh Kr./Kundan

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