

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 15 of 2006

Arising out of P. S. Case No. - 204 Year - 1999 Thana – Tajpur (Pusa) District - SAMASTIPUR

Naresh Singh @ Naresh Pd. Singh, Son of Jagdeo Singh, resident of village –
Bishunpur Bathua, P.S. – Pusa, District – Samastipur

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Shri Ram Shanker Pradhan, Sr. Advocate

For the Respondent : Shri Dilip Kumar Sinha, A.P.P.

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 12-02-2015

The Solitary appellant Naresh Singh @ Naresh Prasad Singh was charged under Section 302/34 Indian Penal Code for committing the murder of Ram Singari Devi in the night intervening the 25th and 26th of August, 1999 at about 1.30 A.M. after breaking into the house of the informant Nageshwar Prasad Singh after having made preparation of causing hurt to the deceased Ram Singari Devi and indeed to commit her murder. The judgment in Sessions Trial No.245 of 2000/277 of 2004 was delivered by the learned Presiding Officer of Fast Track Court No. V, Samastipur on 30th of November, 2005 and the appellant was held guilty of committing the offences he had been charged with. The appellant was heard under Section 235 Cr.P.C. on the quantum of sentence and the learned trial Judge directed the appellant to suffer rigorous imprisonment for life as also to pay

Rs.20,000/- as fine which was to be paid as compensation to the next of the kins of the deceased. He further directed the appellant to suffer rigorous imprisonment for ten years on account of being found guilty under Section 458 Indian Penal Code. The two substantive sentences of imprisonment were directed to run concurrently. The appellant appeals to this Court.

2. The prosecution case was contained in the *fardbeyan* of P.W. 4 Nageshwar Prasad Singh who stated that in the night intervening 25-26th of August, 1999 he and his wife after taking their meals along with their sons P.W. 1 Vinay Kumar Singh and his wife P.W. 2 Rekha Devi retired to their respective rooms. When the informant was in deep slumber, he could pick-up whispering-sound coming out from the courtyard part of his house and he came out shouting. His shouts awoke his son P.W. 1 Vinay Kumar Singh and his wife P.W. 2 Rekha Devi. The informant claimed that he flashed the torch light and saw three persons running away, out of whom, he identified the present appellant Naresh Singh @ Naresh Prasad Singh, but could not identify the other two companions of the present appellant.

3. He made an inspection of his premises and he found that the exit door of the courtyard had been unlatched by removing the bricks which had been put up there for closing the doors.

The appellant, he had trespassed into the bed-room of the informant thereafter and had committed the murder of his wife and had covered the dead body with *Gandera* and other cloth materials.

4. The informant stated that he shouted so much so to attract the villagers to the scene of occurrence. He with the help of his family members and the villagers, brought out the dead body into the courtyard.

5. The *fardbeyan* of the incident which had occurred at 1:30 A.M. in the night intervening 25-26th of August, 1999 was given by P.W. 4 Nageshwar Prasad Singh to S.I. Girish Kumar (not examined) who was the Officer-in-Charge of Pusa police station at 2:15 P.M. and what we find is that in spite of having lodged the report as belated as after about 13 hours, the informant was not putting down any explanation as to what had prohibited him or what were the circumstances for lodging the First Information Report so belatedly.

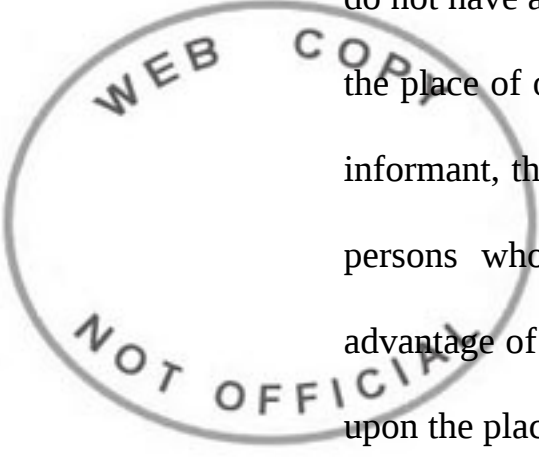
6. At any rate, the investigation was taken up and the dead body appears transmitted for postmortem examination which was held by Dr. Ram Pravesh Rai (P.W. 6) who issued the postmortem examination report (Ext. 5).

7. The Investigating Officer having not been examined, we feel deprived of the benefit of knowing as to how the investigation had proceeded. However, the records show that the

appellant was sent up for trial and he was, accordingly, tried and convicted as pointed out at the very outset of the present judgment.

8. Six witnesses were examined by the prosecution in support of the charges. P.W. 1 Vinay Kumar Singh and P.W. 2 Rakha Devi were spouses between them and were the son and daughter-in-law respectively of P.W. 4 informant Nageshwar Prasad Singh. P.W. 3 Sukhendra Singh was the *Samdhi* of the informant. He came after having come to know about the incident to take stock of the situation and was told as to how this appellant had killed the deceased Ram Singari Devi. Thus, what appears is that he was not an eye witness to the occurrence and learnt about the incident from the informant and his family members. We have already noted that the informant of the case was examined as P.W.4, while P.W. 5 Md. Nizamuddin was a witness of formal character having brought on record the First Information Report of the case Ext. 4. Dr. Ram Pravesh Rai (P.W. 5) had held postmortem examination.

9. The material witnesses of the case were P.Ws. 1, 2 and 4 who had stated that in the light of the torch flashed by P.W. 4 they had seen three persons running away from the *Angan* of the informant and they had identified the appellant Naresh Singh. It was the case primarily of the prosecution that the informant had raised an alarm and that attracted the villagers simultaneously while the appellant and



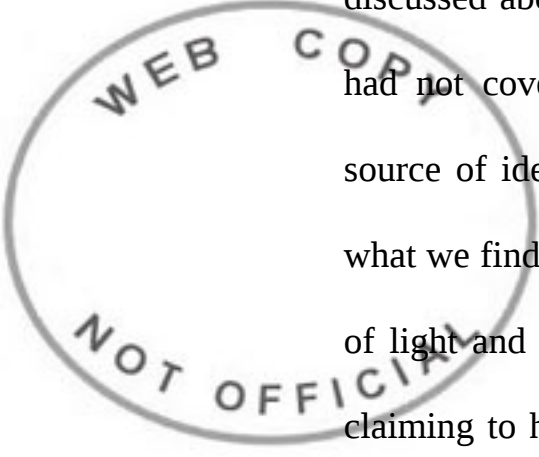
his companions were running away from the scene of occurrence. We do not have any reason to say that if the villagers were converging upon the place of occurrence after having been attracted on the shouts of the informant, then they are supposed to have at least a fleeting glimpse of persons who were running away. We are again deprived of the advantage of having the evidence of those villagers who had converged upon the place of occurrence and who could have been real witnesses to say that indeed the informant had shouted and they had been attracted to those shouts and further, that they had a glimpse of persons who had made good their escape. This is one infirmity which has been pointed out to us by the learned for the appellant.

10. The other circumstance which is found emerging from the circumstances of the case is that as soon as the informant and his family members, like, P.Ws. 1 and 2, were stating that they had seen the appellant and his companions in the flash of torch light. The principal, elementary-presumption has to be that it was dark all around making it not possible to see and identify a person, as such, was the need of flashing the torch so as to putting up sufficient light facilitating seeing and identifying whosoever. It was legitimate under the above circumstance that the torch ought to have been produced before the police. The informant does say that he had produced it and the Investigating Officer has seized it too (P.W.4, Para-14). But again, we

are deprived of the benefit of having the document, the seizure memo before us or having the person who had seized that torch to come into the witness box to tell us that indeed the torch had been produced and he had seized it. That creates a suspicion and leaves the primary inference of darkness enveloping all around intact and we may, as such, hold that probably the informant was naming the appellant out of ill-will than for the real reason of seeing and identifying anyone.

11. Another facet of the evidence of P.W.4, the informant, also suggests the identification of the accused was not possible. The informant has said in paragraph-12 of his evidence that the criminals had covered their faces but he had identified one of them. He volunteered in the very next line that the one whom he had identified, had not covered his face. It appears probable that an old acquaintance who had been inimically disposed towards P.W.4 must take necessary precautions to conceal his identities, lest he was not identified. The appellant, was named in the First Information Report and in the evidence as the person who was seen running away with two others, who were not identified. The identification necessarily was due to the baring of the face by the appellant. We could not persuade ourselves to accept the evidence of P.W.4 on identification.

12. We find one more reason to reject the claim of the prosecution that the real culprit who had participated in commission of



the offence, had indeed been identified. The evidence of P.W.4 as discussed above shows that he had identified the appellant because he had not covered his face. We have also discussed the evidence on source of identification, that's, the flash of the torch light. However, what we find is that the prosecution was itself not sure about the source of light and the manner in which it was to lead evidence. In spite of claiming to have identified the appellant in the torch-light, P.W.4 was stating in paragraph-12 that he identified the accused who had not covered his face as it was a moonlit night which source of light to believe to have facilitated identification? It is difficult to say.

13. The last but not the least is the circumstance that the *fardbeyan* was given after about 13 hours of the incident. The informant had detected the crime not later than it had been committed. He had seen the appellant and his companions running away in the flash of his torch. He had shouted that it was the appellant and his companions who had committed the murder so much so that his relative P.W. 3 Sukhendra Singh had also known about the incident and he happened to visit the informant to be told about the incident and the participation in it of the appellant. But, the informant does not tell us as to why he kept himself confined to the four corners of his house and did not choose to step out of it to move up to the police station to report the matter.

14. Prompt report may not be a circumstance to shoot a case down as fictitious but if other circumstances appear creating some doubt in the veracity of the prosecution case, then it assumes quite some significance and that too when the Court finds no explanation offered for the belated report.

15. These are some of the circumstances, which we find coming out from the evidence of the case upon which, we find that it is a case of implication on suspicion of a person who was treated enemy by the informant than a case of real participation.

16. In the result, the appeal succeeds and the same is allowed. The appellant Naresh Singh @ Naresh Prasad Singh is acquitted of the charges he had been held guilty of by setting aside the judgment of conviction and order of sentence. The appellant is in jail. He shall be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J.)

(Gopal Prasad, J.)

Brajesh Kumar/Kundan
N.A.F.R.

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