

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1107 of 2010

Arising Out of PS. Case No. -22 Year- 2009 Thana –Sikandara (Chandradip) District- JAMUI

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VIJAY SINGH SON OF LATE BALESHWAR SINGH, RESIDENT OF
VILLAGE BARA SOLAHPUR, POLICE STATION CHANDERDEEP
(SIKANDRA), DISTRICT-JAUMUI.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Rakesh Kumar Ranjan, Amicus Curiae.

For the State : Mr. Ashwani Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 22-11-2016

The instant appeal has been filed by sole appellant Vijay Singh against judgment of conviction, dated 17.07.2010 and order of sentence dated 19.07.2010 passed by Additional Sessions Judge, FTC-I, Jamui in Sessions Trial No.210 of 2001/180 of 2009. For the offence under Section 302 IPC, the appellant has been sentenced to R.I. for life along with a fine of Rs.5000/- and in default thereof, to undergo R.I. for six months.

2. The prosecution case as set out in the fardbeyan of Ragini Kumari (PW-7), aged about 8 years, daughter of Shri Murari Singh of village Solahpur, P.S.-Chandradeep, District-Jamui recorded by Subhlal Sah of Chandradeep P.S. on 17.01.2009 at about 12:10 AM in short is as follows:

The informant stated that at about 07:30 AM on 17.01.2009 she had gone to the place of Abha Didi, who lived near her house for tuition. In the meantime, she heard hulla. As she came near her house, she saw Vijay Singh, cousin of his father, who stayed next to her house, assaulting her mother with plank of chowki. On account of assault, her mother sustained



injuries and blood oozed from her wounds. In the meantime, Vijay Singh lifted her mother and tried to throw her in the nearby well, upon which she cried and raised hulla. Vijay Singh in hurry lowered her on the ground and covered her body with a blanket. The occurrence took place as her mother intervened in the fight between Vijay Singh and his brother Ajay Kumar @ Pappu over some heap of straws, which angered Vijay Singh.

3. On the basis of fardbeyan of Ragini Kumari, the police registered Sikandara (Chandradeep) P.S. Case No.22 of 2009. The police after investigation submitted charge sheet under Section 302 IPC against sole appellant on 03.04.2009, whereafter cognizance was taken and case was committed to the court of Sessions for trial. Charge was framed under Section 302 of the IPC, to which the appellant pleaded not guilty and claimed to be tried. The prosecution in support of its case examined the following witnesses:-

PW.1 – Devendra Kumar
PW.2 – Pintu Kumar
PW.3 – Dr. Anjani Kumar Singh
PW.4 – Babloo Singh.
PW.5 – Kailash Prasad Singh (I.O.)
PW.6 – Murari Singh.
PW.7 – Ragani Kumari (informant)
PW.8 – Shubhlal Sah (I.O.)

4. The prosecution also produced and exhibited the following documents in support of its case:-

Ext.1 – Fardbeyan
Ext.2 – Postmortem report.
Ext.3 – Inquest report.
Ext.4 – Seizure list of flank of chowki
Ext.5 – Formal of FIR
Ext.1/1–Signature of informant Ragini Kr. on fardbeyan.
Ext.1/2 – Endorsement of case.
Ext.1/3–Endorsement of case written and signed by S.I.



B.L. Das, SHO, Sikandra P.S. on the fardbeyan.
Material Ext."1" –Plank of Chowki.

5. Defence did not examine any witness nor produced any document. The case of the defence in the statement under Section 313 Cr.P.C. was complete denial of the occurrence. On consideration of materials on record, the trial court convicted the sole appellant under Section 302 of the IPC and sentenced him as noted in the earlier paragraph.

6. At the outset it is relevant to notice that out of eight witnesses examined by the prosecution, PW.7 is the informant herself, PW.1 Devendra Singh is brother of deceased. PW.2 Pintu Kumar, PW.4 Babloo Kumar are co-villagers and like PW.7 (the informant), have claimed to be eye witness of the occurrence, also having seen Vijay Singh assaulting informant's mother on head by plank of cot. PW.6 is the husband of the deceased and at the relevant time who was posted in Bhutan. He is hearsay on point of occurrence. PW.3 is Dr. Anjani Kumar Singh, who conducted postmortem on the dead body of the deceased, PW.5 and PW.8 are two investigating officers, the latter (PW.8-Shubhlal) having recorded the Fard-e-beyan of Ragani Kumari (PW.7). He has also proved his endorsement on the fardbeyan, recorded in his handwriting which was marked as Ext.1/2. He prepared inquest report marked as Ext.-3 and seized the plank of chowki which is marked as Ext.4. He also produced material exhibit before the court at the time of examination marked as Ext.1. PW.5 (Kailash Pd. Singh) carried out the main investigation after taking over charge from PW. Shubhlal Sah.

7. Mr. Rakesh Kumar Ranjan, learned counsel appearing Amicus Curiae on behalf of the appellant submits that the prosecution suffers from a number of infirmities which go to the root of the case and as such, the finding, whatever been recorded by the learned lower court, appears to be unsustainable in the eye of law. To substantiate the same, it has been



submitted that alleged date of occurrence has been shown to have taken place on 17.01.2009, and the FIR also on 17.01.2009, but the same was received at the office of Magistrate on 20.01.2009 and for that, there happens to be no explanation at the end of the prosecution. In its continuity, it has also been submitted that in accordance with Section 157 of the Cr.P.C., the FIR must reach at the office of the Chief Judicial Magistrate within 24 hours excluding the time of journey, and there being delay on that very score is suggestive of the fact that FIR happens to be ante-timed whereupon, its authentication comes under cloud.

8. It has further been submitted that from the evidence adduced on behalf of prosecution during trial, that the same manifests material development and on account thereof, also casts doubt on genuineness of the prosecution version relating to manner of occurrence and thus fit to be rejected. To substantiate the same, the learned Amicus Curaie drew attention towards the evidence of PW.1, PW.2 in particular who, in course of investigation did not claim themselves to be an eye witness to the occurrence. However, during trial they posed themselves to be an eye witness to the occurrence, which facts stand exposed from evidence of the Investigating Officer, PW.5. Furthermore, it has also been submitted that PW.4 had claimed himself to be an eye witness but during cross-examination, his credibility as an eye witness had become completely evaded. In likewise manner, the evidence of PW.7, informant Ragani Kumari was found vulnerable to tutoring and further, from the nature of the deposition, it is apparent that same was completely monitored. The cumulative effects of the aforesaid deficiencies make the evidence of all the prosecution witnesses unworthy of credence, and fit to be brushed aside. PW. 6, the husband of deceased, is not an eye witness of occurrence and as such his evidence is not of any relevance on that score. Therefore, the evidence of the doctor PW.8 who conducted the



postmortem report that the deceased died on account of injury on her head by hard and blunt substance will not be of much help to the prosecution in view of the contradiction and deficiency in the prosecution case. It was also the submission of the defence that the Investigating Officer did not find blood stain at the place of occurrence and as such it could be safely inferred that the place of occurrence as mentioned by the prosecution is not the actual place where the alleged occurrence took place.

9. Learned Amicus Curiae next submits that the prosecution side has suppressed the real genesis of occurrence. At an initial stage it has been shown that interruption of deceased in the dispute of Vijay Singh with Ajay Kumar @ Pappu over heap of straws provoked the farmer (Vijay Singh) whereupon he committed her murder but, during course of trial, the witnesses have stated that there was land dispute in between them since before, which was the reason behind his (appellant's) false implication. Had there been such disclosure at an initial stage, the investigation would have taken place in its right prospective whether there was any possibility for deceased to intervene, while altercation amongst brothers was going on. Therefore, it has been submitted at the end of the learned Amicus Curaie that in case all the events are taken together, it can be safely inferred that prosecution could not be able to substantiate its case beyond all reasonable doubt whereupon, appellant is entitled for acquittal.

10. On the other hand, the learned Additional Public Prosecutor while supporting the finding recorded by the learned lower court has submitted that evidence of the witnesses is to be read in its totality. The law does not permit reading of the evidence in piecemeal manner picking a few lines from here and there and then trying to argue on that basis in order to demolish the evidence of the witnesses. If, the evidence of PW.4 as well as PW.7 are read in its totality in consonance with the evidence of the doctor (PW.3), it is



apparent that prosecution had succeeded in substantiating the charge having been levelled against Appellant for commission of murder of Rubi Sinha. Furthermore, it has also been submitted that Investigating Officer, PW.5 had obviously not found blood at the spot because of the fact that it was PW.8 (the then Officer-in-charge), who on being informed by the Chowkidar, came at the spot, recorded the fardbeyan, lifted dead body by preparing inquest report, and sent it to mortuary, took out chowki plank from a well, prepared seizure list, and then thereafter, entrusted investigation to PW.5 who inspected place of occurrence, subsequently. Therefore, absence of blood at the P.O. was but natural. Furthermore, it has also been submitted that unless and until witnesses is cross-examined on a particular point and have an opportunity to explain the infirmities, the same cannot be raised subsequently to the detriment of the other side. Neither PW.5 nor PW.8 was ever cross-examined on the delay in transmitting the FIR to the court of Chief Judicial Magistrate, and thus, the same could not be raised at the present moment, as those witnesses have no opportunity to explain the same. He next submits that the delay in remission of the FIR to the court in any case would not affect the prosecution case as the fardbeyan and FIR were recorded and registered immediately after the occurrence. Besides this, the inquest report, the seizure of plank, and steps for postmortem were completed in quick succession.

11. As noticed earlier in order to substantiate its case, the prosecution examined eight witnesses and also adduced documentary evidence.

12. Coming to oral evidence, first of all the evidence of the informant (PW.7) is to be noticed. This witness was aged about 9 years at the time of examination. Before recording her evidence, the learned trial Judge had tested her and found capable of understanding the general things. She had stated that at the time of occurrence, she was returning after tuition.



When she came near Dalan, she saw Vijay Singh assaulting her mother on her head with plank of a cot, on account of which, she fell. Even then, Vijay Singh continued to assault. She began to cry as well as raised alarm, whereafter Pintu (P.W.2), Bablu (PW.4) also came, who saw the occurrence. The accused Vijay threw the plank in the well. Her mother died at the spot. Police soon arrived and she made her fardbeyan instantly. The Police also recovered plank from the well.

13. During cross-examination, she stated that while she was taking tuition, she heard sound of quarrel where upon she along with Abha, Sobha and Anupam came to the spot. Her mother had sustained injury on her head from, which blood trickled also to the ground. She was lying on the ground unconscious and Vijay continued to assault her thereafter also, and then threw plank in the well and fled. Many persons assembled on hearing her cry. She denied the suggestion that at the instance of Babloo and Pintu, she has made false implication. It is evident from statement that she had given vivid picture of the manner of occurrence and the defence has not been able to elicit any contradictions worth the name. Some minor contradictions with regard to taking out of plank cannot be considered vital contradictions, so as to brush aside her evidence.

14. Babloo Kumar PW.4, is another witness who stated that on 17.01.2010, he was brushing his teeth, when he heard sound coming from the house of Rubi Devi. He rushed to the place, where he saw Vijay assaulting her with plank of cot. He further stated that Vijay Singh continued with assault though she had fallen on the ground. Vijay Singh after throwing plank in the well, ran away. In cross-examination, he admitted of not trying to catch the accused. He further stated that Devendra Kumar (PW.1), Pintu (PW.2) and Ragini (PW.7) were also present. The chowkidar gave information to police where after it arrived and took fardbeyan of Ragini (PW.7) in his presence,



over which he along with Devendra put their signatures as attesting witnesses. The inquest was prepared in his presence as well. The police prepared seizure and thereafter took his statement also.

15. During cross-examination at para-9, he has stated that when he came at the place of occurrence, blood was coming out from injuries of Rubi Singh. She had worn clothes which was also soaked with blood. Blood had fallen over earth also. Ruby was lying on the ground. They tried to catch Vijay but however he ran away after throwing plank in the well. He is not remembering whether blood was on the plank or not, as accused had thrown plank in the well. Well lies 15 feet away from P.O. He was unable to say as to who informed the *chowkidar* to call the police. We find that the evidence of this witness is consistent with the evidence of other prosecution witnesses with respect to manner of occurrence. Some minor contradictions are recorded in para-17, 18, 19 and 20 of his evidence which will not in any manner render his evidence unworthy of reliance with regard to the place of occurrence, manner of occurrence and time of occurrence.

16. PW.1 is Devendra Kumar, brother of deceased Ruby. In his examination-in-chief, he has claimed himself to be an eye witness of occurrence, as he was present at the house of deceased Ruby. He supported the prosecution case that Vijay assaulted deceased Ruby Singh with plank on her head repeatedly, as a result of which, she fell on the ground. He even continued to assault, while she was lying on the ground. Pintu, Bablu, Ragini were present at the relevant moment. After committing assault, Vijay threw plank in the well and fled. Police came on information given by the chowkidar. His sister's daughter Ragni gave ferd bayan on which he along with Bablu had put their signatures. Police drew plank from the well and for that seizure list was prepared. Inquest report was also prepared and the dead body was sent for postmortem.



17. During cross-examination at para-4, PW.1 had stated that he has not tried to apprehend the accused. In para-5, he had stated that blood had fallen from the injuries on to the earth. It was within area of one palm. In para-6, he has stated that there was dispute between deceased as well as Bijay Singh over land measuring one Bigha one kattha. Though there are some developments in the statement of this witnesses, in course of trial, his evidences is consistent with the evidence stated before the police with respect to cause of occurrence, time of occurrence and manner of occurrence.

18. PW.2 in his examination-in-chief stated that on the alleged date and time of occurrence, he was returning from his field. He heard hulla and commotion as he came near Dalan of the deceased Ruby. He saw Vijay assaulting her with plank. He along with others tried to save as accused Vijay had escaped after throwing the plank in the well. Rubi Devi died instantly. Some others were also present since before. The police came and took statement of Ragini (PW.7) and thereafter his statement was also taken. In para-3 of the cross-examination, he stated that when he reached the place of occurrence, 8 to 10 persons were standing therefrom before, but none tried to catch the accused. He admitted that accused did not assault any one of them. Though there seems to be some minor contradictions in the statement of this witness, he has testified the factum of commission of occurrence in the manner as stated in the prosecution case.

19. PW.6 is the husband of the deceased and a hearsay witness. He has not seen the occurrence and as such his evidence is not of much avail. On being informed, PW.8 the officer-in-charge of police station reached the place of occurrence and recorded fardbeyan of Ragini (PW.7). He thereafter prepared inquest report and sent the dead body for P.M. (exhibited). He also took out wooden plank from the well and prepared seizure list (exhibited) and deposited the plank at P.S. (exhibited). During cross-



examination, it is evident that defence has not been able to extract anything adverse to the prosecution. So, from his evidence, it has become clear that soon after the occurrence, he was present at the place of occurrence, where at a first instance, he took effort to send the dead body for postmortem as well as also succeeded in taking out wooden plank from a well with aid of Choukidar. It is also evident that this witness was not at all cross-examined on presence /absence of blood on the plank and as to, whether water was present in the well and whether plank was wet with water. In likewise manner, source of information has also not been questioned.

20. PW.5 (Kailash Prasad Singh) is the main Investigating Officer who took over charge from PW.8. He had stated that after being entrusted with the investigation, he was handed over plank (material witness), seizure list, copy of inquest which he endorsed in para-1 of the C.D., However, mistakenly did not scribe their details in C.D. He took over investigation on 17.01.2009 at 5 PM and straight away proceeded to the P.O. He recorded further statement of Ragani Kumari (PW.7). He inspected the place of occurrence at the instance of informant which happens to be barren land, lying at Northern corner of Baithka of Rubi (Deceased) having boundary as follows:- East-Barren land and well of deceased; West-Shop of deceased, North-Common Gali, South to North-House of deceased and Vijay Singh. He took statement of witnesses, received P.M. report, also received supervision report. and then submitted charge sheet after completing investigation. He has also exhibited plank, as material exhibit.

21. During cross-examination, he has shown the 'stamp' containing P.S. case no. prepared by PW.8 affixed on material exhibit. In para-7, he has admitted that in para-1 of the C.D. he has mentioned the facts regarding handing over of material exhibit, but it has not been incorporated that the same/was handed over on 17.01.2009 itself. He has further stated in para-8



that blood stains were not found on the plank. In para-10, he has stated that he has not mentioned time of inspection of P.O. in the case diary. He also stated that he has not mentioned in the C.D., the distance of well from P.O. He has not mentioned the depth of well. He has not mentioned in the C.D. regarding presence of blood at the P.O.

22. The infirmities aforementioned are not very relevant in the background of the consistent evidence of witnesses on material points. PW.8, who arrived soon after the occurrence and took necessary steps for recording of fardbeyan, preparation of inquest report, obtaining of postmortem, recovery of plank.

23. PW.3 is the Doctor who, during course of P.M., found following ante-mortem injuries.

- (I) Rigor Mortis fully developed.
- (II) Whole of the skull and left side of face was flattened and crushed with lacerated wound over left side of forehead and head, about 6"x4" up to Brain with blood clot over it. On further dissection there was laceration of muscles and sub lateral tissue of left side of face and head with common fracture of facial bones, skull bones. There was laceration of brain in an area of 4"x3"x3" size with blood clot over it.

The above injuries were ante-mortem in nature and caused by hard and blunt object. According to opinion of doctor, cause of death was due to injury to the vital structure of brain leading to C/R. failure and death. Time since death till holding P.M. examination, within 24 to 36 hours. This report has been prepared by doctor and bears his signature.



24. The evidence of doctor corroborates the prosecution case that the deceased died on account of head injuries caused by hard and blunt substance at the given time. We find besides this, the presence of PW.7 the daughter of the deceased very natural; similarly presence of PW.2 and 4, who are co-villagers is also natural. Similarly, the presence of PW.1 who is brother of the deceased, is also not unnatural. The evidence of these witnesses e.g. PW.1, PW.2, PW.4 and PW.7 as eyewitness is not in any way demolished by the defence. The evidence of two witness PW.5 and PW.8 and the doctor corroborate prosecution case. It is true that there was delay in transmitting the FIR to the Chief Judicial Magistrate but the said delay would not be of much consequence as Shublal who recorded and registered the FIR was not examined on that score. He was not cross-examined on the point of delay in remitting the FIR to the court. He was deprived of any opportunity to explain the same and as such, no adverse inference could be drawn against the prosecution on that court.

25. The view expressed by us finds support from the well settled principle of law that mere delay in transmitting the FIR to the court would not make the whole prosecution unreliable. The principle enshrined in Section 157 of the Cr.P.C., requiring the fardbeyan recorded or the complaint received to be forthwith communicated to the court, is primarily to check possibility of its manipulation. The delay in transmitting the special report to the court is linked to the lodging of FIR and to ensure that there is no manipulation in the original report itself. There is no universal rule that if there is a delay in sending complain of fardbeyan to the court the same would make prosecution case unreliable. In any view of the matter, the prosecution should be provided an opportunity to explain the delay, if any, in sending such report to the court and if no opportunity is provided to the prosecution to explain the delay, the defence cannot or make an issue of delay in remitting the FIR to the court, as



generally no breach in absence of an opportunity to explain the same should be countered to the detriment of the other side. Furthermore, even if there is no plausible explanation by the prosecution, the court should not reject the FIR of the prosecution case outright, if the court otherwise is satisfied about the truthfulness and worthiness of such report. The views expressed by under Section find support in the judgment of the Hon'ble Apex court in case of ***State of Rajasthan v. Daud Khan*** reported in **2016 Cr.L.J. 165** at paragraph 26,27 and 28 which are quoted herein below for ready reference:

“26. The interpretation of Section 157 CrPC is no longer res integra. A detailed discussion on the subject is to be found in *Brahm Swaroop v. State of U.P.* which considered a large number of cases on the subject. The purpose of the “forthwith” communication of a copy of the FIR to the Magistrate is to check the possibility of its manipulation. Therefore, a delay in transmitting the special report to the Magistrate is linked to the lodging of the FIR. If there is no delay in lodging an FIR, then any delay in communicating the special report to the Magistrate would really be of little consequence, since manipulation of the FIR would then get ruled out. Nevertheless, the prosecution should explain the delay in transmitting the special report to the Magistrate. However, if no question is put to the investigating officer concerning the delay, the prosecution is under no obligation to give an explanation. There is no universal rule that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable. In other words, the facts and circumstances of a case are important for a decision in this regard.

27. The delay in sending the special report was also the subject of discussion in a recent decision being *Sheo Shankar Singh v. State of U.P.* wherein it was held that before such a contention is countenanced, the accused must show prejudice having been caused by the delayed dispatch of the FIR to the Magistrate. It was held, relying upon several earlier decisions as follows: (SCC pp. 549-50, paras 30-31)

“30. One other submission made on behalf of the appellants was that in the absence of any proof of forwarding the FIR copy to the jurisdiction Magistrate, violation of Section 157 CrPC has crept in and thereby, the very registration of the FIR becomes doubtful. The said submission will have to be rejected, inasmuch as the FIR placed before the Court discloses that the same was reported at 4.00



p.m. on 13-6-1979 and was forwarded on the very next day viz. 14-6-1979. Further, a perusal of the impugned judgments of the High Court² as well as of the trial court discloses that no case of any prejudice was shown nor even raised on behalf of the appellants based on alleged violation of Section 157 CrPC. Time and again, this Court has held that unless serious prejudice was demonstrated to have been suffered as against the accused, mere delay in sending the FIR to the Magistrate by itself will not have any deteriorating (sic) effect on the case of the prosecution. Therefore, the said submission made on behalf of the appellants cannot be sustained.

31. In this context, we would like to refer to a recent decision of this Court in *Sandeep v. State of U.P.* wherein the said position has been explained as under in paras 62-63: (SCC p. 132)

“62. It was also feebly contended on behalf of the appellants that the express report was not forwarded to the Magistrate as stipulated under Section 157 CrPC instantaneously. According to the learned counsel FIR which was initially registered on 17-11-2004 was given a number on 19-11-2004 as FIR No. 116 of 2004 and it was altered on 20-11-2004 and was forwarded only on 25-11-2004 to the Magistrate. As far as the said contention is concerned, we only wish to refer to the reported decision of this Court in *Pala Singh v. State of Punjab* wherein this Court has clearly held that (SCC p. 645, para 8) where the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the court then, however improper or objectionable the delay in receipt of the report by the Magistrate concerned be, in the absence of any prejudice to the accused it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.

63. Applying the above ratio in *Pala Singh* to the case on hand, while pointing out the delay in the forwarding of the FIR to the Magistrate, no prejudice was said to have been caused to the appellants by virtue of the said delay. As far as the commencement of the investigation is concerned, our earlier detailed discussion discloses that there was no dearth in that aspect. In such circumstances we do not find any infirmity in the case of the prosecution on that score. In fact the above decision was subsequently followed in *Sarwan Singh v. State of Punjab*, *Anil Rai v. State of Bihar* and *Aqeel Ahmad v. State of U.P.*”



28. It is no doubt true that one of the external checks against antedating or ante-timing an FIR is the time of its dispatch to the Magistrate or its receipt by the Magistrate. The dispatch of a copy of the FIR “forthwith” ensures that there is no manipulation or interpolation in the FIR.¹³ If the prosecution is asked to give an explanation for the delay in the dispatch of a copy of the FIR, it ought to do so. However, if the court is convinced of the prosecution version’s truthfulness and trustworthiness of the witnesses, the absence of an explanation may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case.”

26. In the evidence discussed above, we have further expressed our view even if the investigation is defective, the rest of the evidence must be scrutinized independent of such evidence, and the entire evidence ought not to be discredited, otherwise the criminal trial would be plummeted to the level of investigation itself. Laying down the issue, the Hon’ble Apex Court in case of **Ranjeet Kumar Ram alias Ranjit Kumar Das v. State of Bihar** reported in 2015 Cr.L.J. 2944 at para-21 observed:

“21. It is well settled that in criminal trials even if the investigation is defective, the rest of the evidence must be scrutinized independently of the impact of the defects in the investigation otherwise the criminal trial will plummet to the level of the investigation. Criminal trials should not be made casualties for any lapses committed by the investigating officer. In *State of M.P. v. Mansingh & Ors.* (2003) 10 SCC 414, it was held that even if there was deficiencies in the investigation that cannot be a ground for discrediting the prosecution version. The same view was reiterated in *Sheo Shankar Singh v. State of Jharkhand and Anr.*, (2011) 3 SCC 654: (AIR 2011 SC 1403) and *C. Muniappan & Ors. v. State of Tamil Nadu* (2010) 9 SCC 567(AIR 2010 SC 3718).”

27. Furthermore even exaggerations discrepancies or minor development in the case, not touching the core of the case would not result in



rejection of evidence as a whole as no true witness can escape from making some discrepant details, but only if the discrepancies in the evidence is vital and incompatible with his own version, then only in such circumstances, the exaggeration or the discrepancy is to be taken into account. All minor exaggerations, discrepancies or development cannot be a factor for disbelieving the entire evidence. The court would have to ignore the discrepancies which do not shed the basic version of the prosecution, for it is the court because of the vast experience of matter, has to come to a finding whether the discrepancies have affected the prosecution case. Again explaining the law on the issue, the Hon'ble Apex Court in case of **Vinod Kumar v. State of Haryana** reported in **2015 Cr.L.J. 1250** at para-19 observed as follows:

“24. The next facet relates to the discrepancies in the evidence of the witnesses. The learned trial Judge has found discrepancies with regard to the handing of letter by Santosh to Manphul; the discrepancies relating to the place and time pertaining to various aspects stated by witnesses and the identity of the accused at the time of arrest. The discrepancies which have been noted are absolutely minor. The High Court has correctly observed that the minor discrepancies like who met whom, at what time and who was dropped and at whose place and at what time, etc. have been given unnecessary emphasis. It is well settled in law that minor discrepancies on trivial matters not touching the core of the case or not going to the root of the matter could not result in rejection of the evidence as a whole. It is also well-accepted principle that no true witness can possibly escape from making some discrepant details, but the court should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that it would be justified in jettisoning his evidence. It is expected of the courts to ignore the discrepancies which do not shed the basic version of the prosecution, for the court has to call into aid its vast experience of men and matters in different cases to evaluate the entire material on record. (See *State of U.P. v. M.K. Anthony* (1985) 1 SCC 505, *Rammi v. State of M.P.* (1999) 8 SCC 649 and *Appabhai v. State of Gujarat* (1988) Supp SCC 241)

28. The defence had argued that evidence of child witness Rubi



Kumari who was of 9 years of age, should not be considered because of her minor age. It is well settled that evidence of child witness cannot be brushed aside or ignored, merely because of her tender age, the court is satisfied about her grasp and understanding of question put to her, the evidence cannot be thrown out of reckoning. What the court is required to see is that the evidence of the child witness is credible and that he or she was in a position to understand the situations and the circumstances. If the court is satisfied about her understanding. Laying down authority on the issue, the Hon'ble Apex Court in case of **Ranjeet Kumar Ram alias Ranjit Kumar Das** (supra) in para-14 observed as follows:

“14. At the time of occurrence, as well, while deposing in Court, Rubi Kumari (PW2) was aged only seven years. Evidence of the child witness and its credibility would depend upon the circumstances of each case. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one. Before PW2 was examined as a witness in the court during trial, her statement under Section 164 Cr.P.C. was recorded by the Judicial Magistrate (PW13). In his evidence PW13 has stated that he tested the understanding of witness Rubi Kumari (PW2) and after being satisfied about her understanding, recorded her statement under Section 164 Cr.P.C. When PW2 was examined as a witness in the court during trial, the trial judge had also put preliminary questions to the child witness Rubi Kumari (PW2) and satisfied that she was capable of understanding the questions put to her. When the trial court has ascertained the discernment of PW2 and has formed an opinion that PW2-Rubi Kumari is competent to testify and then recorded her evidence, we see no reason to discredit PW2's testimony. PW2 though sole witness, by concurrent findings courts below found her evidence unassailable and we find no ground to take a different view.”

29. From the evidence of PW.7, it is evident that before pressing reliance on the evidence, the court had first satisfied itself about the understanding of the witness of the situation and the circumstances and only after being so satisfied, had placed reliance upon her evidence. The court



further found that the evidence of the witness is such which is not bereft of credibility.

30. As such, we find that the trial court has rightly relied upon the evidence of the child witness Rubi Kumari in coming to a recording of finding of guilt against the appellant. The postmortem report too supports the prosecution case, which was set rolling of the fardbeyan of this witness (PW.7).

31. In the result the appeal is dismissed. The appellant who is in custody would remain so, to serve the rest of his sentence. The judgment and sentence passed by the trial court is affirmed.

32. Mr. Rakesh Kumar Ranjan who was appointed by this Court to appear Amicus Curiae in this case has rendered valuable assistance and we fix his fee as Rs.2000/-.Patna High Court Legal Aid Committee is directed to ensure the payment of the aforesaid amount to Mr. Rakesh Ranjan and to facilitate the payment, the first page and the last page of the judgment would be also handed over to the learned counsel for being handed to the learned Secretary, Patna High Court Legal Aid Committee.

(Samarendra Pratap Singh, J.)

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.01.2017
Transmission Date	24.01.2017

