

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 342 of 1993

Arising Out of PS.Case No. – 107 Year- 1992 Thana – Ashok Paper Mill District- Darbhanga

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Bulanti Devi @ Bulanti Kujarni W/o Late Md. Salim, Resident of Village –
Sibaisinghpur, P.S. – Ashok Paper Mill, District – Darbhanga.

.... Appellant

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Neeraj Kumar @ Sanidh,
Amicus Curiae

For the Respondent/s : Smt. Shashi Bala Verma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date: 22-06-2017

The present jail appeal was preferred against judgment of conviction and sentence dated 15-07-1993 passed in Sessions Trial No. 71 of 1993/22 of 1993 by the learned 1st Additional Sessions Judge, Darbhanga (hereinafter referred to as 'Trial Court'). The Trial Court convicted the sole appellant for the offence under Sections 302, 201 of the Indian Penal Code and sentenced her to undergo imprisonment for life for offence under Section 302 of the Indian Penal Code. The appellant was further sentenced to undergo imprisonment for three years for offence under Section 201 of the Indian Penal Code. Both the sentences were directed to run concurrently.



2. Short fact of the case is that on the *fardbeyan* of one Choukidar namely Ras Bihari Paswan, an F.I.R. was lodged, vide Ashok Paper Mill P.S. Case No. 107 of 1992 on 26-06-1992 at 8:30 PM against unknown for offence under Section 302 of the Indian Penal Code. In the case, one Md. Salim was done to death. The *fardbeyan* of Choukidar was recorded on 26-09-1992 at 4:00 P.M. in the house of deceased Md. Salim, Village – Sibaisinghpur, P.S. – Ashok Paper Mill, District Darbhanga. In his *fardbeyan*, the informant disclosed that deceased Md. Salim was Asthmatic patient since last three years and he was not in a position to move and he was passing urine and stool on his bed itself. His wife (appellant) was taking care of him. At about 2:00 P.M., the informant got an information that Md. Salim was done to death by cutting his throat. After getting said information, he reached the house of Md. Salim and noticed that throat of Md. Salim was cut and there was a plan to bury him. After noticing the said fact, he stayed there to keep vigilance and sent his son for giving information to the police. He got information that Md. Salim was murdered by a sharp weapon in the night of 25-09-1992. In the *fardbeyan*, he stated that he noticed that blood-stain was already removed. Even after his search, he did not notice the weapon. He raised suspicion on the wife of deceased, who



is appellant before this Court. On the basis of *fardebayan*, an F.I.R. was lodged against unknown and after investigation, chargesheet was submitted and the case was committed to the court of sessions.

3. During trial, to establish the accusation, from prosecution side, 11 (eleven) witnesses were examined, namely; (1) *Raudi Kunjra*, (2) *Maslim*, (3) *Kedar Nath Jha*, (4) *Rama Kant Sah*, (5) *Mahesh Bhagat*, (6) *Abdul Chota*, (7) *Dasrath Das*, (8) *Md. Moti*, (9) *Vijay Pratap Singh*, (10) *Rash Bihari Paswan* and (11) *Deo Nandan Prasad Singh*. However, during trial, P.W. 1, 2, 3 & 8 turned hostile, P.W.-9 (*Vijay Pratap Singh*), who conducted autopsy on the dead-body of the deceased, had proved the post-mortem examination report, which has been marked, as **Ext. '3'**. The formal F.I.R. has been marked, as **Ext. '5'**, whereas, *fardebayan* was got exhibited, as **Ext. '2'**. In the case, during trial, only informant, who was examined as P.W.-10, had come to support the prosecution case. P.W.-5 & 6 were only tendered and as such, their evidence has got no relevance for adjudication of the case. So far as P.W.-7 namely *Dasrath Das* is concerned, he is the heresay witness. However, P.W.-7, in his cross-examination, had stated that deceased died due to ailment.

4. Sri Neeraj Kumar @ Sanidh, learned counsel, who was requested by the Court to assist as *Amicus Curiae*, has argued



that in the case, there is no eye-witness and the case was based only on circumstantial evidence. By way of referring to evidence of the informant (P.W.-10), he submits that during his examination before the trial court, he had completely changed the stand and he tried to develop the case only with a view to incorrectly prove the case against the appellant. He has argued that in the *fardbeyan*, the informant had not at all stated regarding ill-relationship between the appellant and her deceased husband, but during the trial, he tried to develop a case that the appellant and her husband were always fighting with each other. Even, according to Sri Neeraj Kumar @ Sanidh, save and except suspicion or presumption, nothing has been brought on record to establish completion of chain of circumstances. By way of referring to statement of the appellant recorded under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), he has argued that the appellant was not asked any question regarding motive of the occurrence and as such, in absence of any such suggestion to the appellant, during trial, at the stage of recording statement under Section 313 of the Cr.P.C., the entire case had vitiated. In the case, there is only one witness, who is none else but the informant. The sole witness i.e. P.W.-10 had taken inconsistent stand in his *fardbeyan* and



deposition. Though, he had given detail regarding the death of the husband of the appellant, he had not at all disclosed regarding relationship in between the appellant and her husband, but in deposition, during trial without any basis, he stated that the relation in between the appellant and the deceased (husband) was not well and tried to support the motive of the case. He has argued that the informant (P.W.-10), in his deposition, has stated that he was residing near the house of the appellant and deceased, but has not stated regarding detail. According to him, once in the F.I.R., certain facts were disclosed by the informant, it was expected that he would have described about the relationship of the appellant with the deceased. By way of referring to a judgment of the Apex Court, reported in **2010 Criminal Law Journal 433 (Arulvelu and Anr. vs. State and Anr.)**, he has argued that in such cases, in F.I.R., those facts were required to be indicated, which was disclosed by the informant before the trial court. He has specifically referred to paragraph – 16 of the said judgment, which is quoted hereinbelow:-

“16. The High Court observed that the FIR cannot be an encyclopedia to contain all the details of history of the case. This approach of the High Court does not seem to be correct. The FIR should at least mention a broad story of the prosecution and not mentioning of material and vital facts may affect the credibility of the FIR.”



5. Regarding absence of motive and non-asking such question to the appellant under Section 313 of the Cr.P.C., he has placed reliance on **AIR 1984 Supreme Court 1622 (Sharad Birdhichand Sarda vs. State of Maharashtra)** and referred to paragraph – 142 of the judgment, which is as follows:-

“142. Apart from the aforesaid comments there is one vital defect in some of the circumstances mentioned above and relied upon by the High Court, viz., circumstances Nos. 4, 5, 6, 8, 9, 11, 12, 13, 16 and 17. As these circumstances were not put to the appellant in his statement under Section 313 of the Criminal Procedure Code, 1973 they must be completely excluded from consideration because the appellant did not have any chance to explain them. This has been consistently held by this Court as far back as 1953 where in the case of *Hate Singh Bhagat Singh v. State of Madhya Bharat (AIR 1953 SC 468)* this Court held that any circumstance in respect of which an accused was not examined under Section 342 of the Criminal Procedure Code cannot be used against him. Ever since this decision, there is a catena of authorities of this Court uniformly taking the view that unless the circumstance appearing against an accused is put to him in his examination under Section 342 of the old Code (corresponding to Section 313 of the Criminal Procedure Code, 1973), the same cannot be used against him. In *Shamu Balu Chaugule v. State of Maharashtra (1976) 1 SCC 438* this Court held thus: [SCC para 5, p. 440: SCC



(Cri) p. 58]

The fact that the appellant was said to be absconding, not having been put to him under Section 342, Criminal Procedure Code, could not be used against him.”

6. According to learned counsel for the appellant, in a case of circumstantial evidence, it was mandatorily required on the part of the prosecution to establish entire chain of circumstances, however; in the present case, save & except presumption, there is nothing to show complicity of the appellant.

7. Smt. Shashi Bala Verma, learned Addl. Public Prosecutor, while opposing the appeal, submits that in the present case, it has been established that deceased was living with the appellant in a house from where dead-body was recovered. According to her, once dead body, having cut injury on neck, was found in the house of the appellant and she was trying to bury the dead-body, in that event, only one conclusion can be drawn that the husband was done to death by the appellant herself, none else. She further submits that dead-body was found without any blood-stain. She tried to suggest that the appellant, with a view to remove the evidence, had committed offence under Section 201 of the Indian Penal Code.



8. We have also examined the materials on record. In this case, the investigating officer was examined, as P.W.-11. On going through his evidence, nothing has come as to whether the investigating officer had taken any effort to recover the weapon used in the occurrence. On the contrary, the investigating officer has said that at the place of occurrence, there was no blood-stain. Meaning thereby that there was a probability that the deceased was done to death at some other place. In a criminal trial, if there is two possibility, then in that event, in absence of any positive evidence, pointing out guilt against an accused, one may not be held guilty. If the occurrence points out two possibility, then in that event, presumption can be drawn regarding the innocence of the accused. This proposition was already noticed by the Hon'ble Apex Court in **Sharad Birdhichand Sarda's case (*supra*)** in paragraph 175(2), which is quoted hereinbelow:-

"175(2) That, at any rate, the evidence clearly shows that two views are possible - one pointing to the guilt of the accused and the other leading to his innocence. It may be very likely that the appellant may have administered the poison (potassium cyanide) to *Manju* but at the same time a fair possibility that she herself committed suicide cannot be safely excluded or eliminated. Hence, on this ground alone the appellant is entitled to the benefit of doubt resulting in his acquittal."



9. In the entire evidence, save and except drawing a presumption, nothing has been brought on record. It is fact that in the case, all other independent witnesses had already turned hostile and only one witness i.e. informant (P.W.-10) had stated something, but that too was not consistent with his *fardbeyan*. In the case, the informant in his *fardbeyan* had stated that after getting information regarding death, he reached at the place of occurrence and asked his son to inform the police and thereafter, police arrived, however; the investing officer had not bothered to record statement of the son of the informant nor he was examined as witness during the trial. This fact can be noticed in the deposition of the investigating officer in paragraph – 4, in which, he has accepted that he had not recorded statement of the son of the informant, which was vital for proper investigation of the case. In the case, neither blood stain was recovered from the place of occurrence or at any other place nor weapon was recovered nor anyone had seen the occurrence and as such, only on presumption, the appellant was not required to be held guilty and as such, the Court is of the opinion that judgment of conviction and sentence is not sustainable in the eye of law.

10. Accordingly, the appeal is allowed and judgment and sentence dated 15-07-1993 passed in Sessions Trial No. 71 of



1993/22 of 1993 by the learned 1st Additional Sessions Judge, Darbhanga is, hereby, set aside. The appellant, who was directed to be released on bail by order of this Court dated 27-09-1993 on furnishing bail-bond, is discharged from liability of her bail-bond.

(Rakesh Kumar, J.)

(Mohit Kumar Shah, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	29.06.2017
Transmission Date	29.06.2017

