

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.834 of 2014

Arising Out of PS. Case No.-38 Year-2008 Thana- BUDHUCHAK District- Bhagalpur

Sudhir Mandal S/o Late Hukum Chandra Mandal R/o Village-Kachaharia,
P.S.-Buddhuchak, District-Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Mr. Nilesh Kumar & Mr. Imteyaz Ahmad, Advocates.
For the Respondent/s	:	Mr. Satya Narain Prasad APP

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
and
HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date : 15-12-2017

The appeal filed by the sole appellant challenges the correctness of the judgment of conviction dated 22nd of August, 2014 passed by 1st Additional Sessions Judge, Bhagalpur in Sessions Trial No. 288 of 2009/Tr. No. 55 of 2012 whereby he was held guilty for the offence under Section 302 of the I.P.C. and by order of sentence dated 29.08.2014, the appellant was directed to suffer rigorous imprisonment for life and to pay a fine with default clause.

2. The appellant was charged for having caused murder of his wife Sakuntala Devi by assaulting her with



‘Churra’ in the intervening night of 29/30-10-2008. The prosecution case in short is that on 30.10.2008 at about 3 AM the informant (PW6) received a call on his mobile that his sister was killed by her husband (appellant herein). After receiving this information, the informant along with his mother (PW2) and a close friend, namely, Sonu Kumar Singh (PW7) went to the village of the appellant on a motorcycle and reached there at about 3.45 AM. They saw the dead body of the deceased lying in one of the rooms of her matrimonial home. His brother-in-law, the appellant, was also present there. On enquiry, he could not reply satisfactory as to how the deceased received injuries and died. The matter was reported to the police and the ‘*Fardbeyan*’ (Ext.1) made by him was recorded by the officer-in-charge of Budhu chak Police Station (PW14) on 30.10.2008 at 4 O’clock in the morning. The informant alleged in the ‘*Fardbeyan*’ that the appellant used to assault and torture his sister from before and was in the habit of making demand of cash from his father. In the hope of the appellant amending his habit the father of the deceased at times used to give some cash to him to ensure that the appellant does not torture his wife. On several occasions, the family members and relatives had attempted to pacify the matter but the appellant had not



amended his ways. It was alleged that the appellant had assaulted his wife with knife resulting in her death. PW-14 after recording the '*Fardbeyan*' drew up a formal F.I.R. and himself took up the investigation.

3. The F.I.R. was sent to the Court on the following day. The inquest proceeding was carried out and the inquest report (Ext.2) was drawn, witnessed by a neighbour of the appellant Pappu Kumar (PW8). The dead body was dispatched for the autopsy. PW-11 was then posted as the Assistant Professor of Forensic Medicine, Jawahar Lal Nehru Medical College and Hospital. He conducted the postmortem examination on 30.10.2008 at 3 P.M. and furnished the autopsy report (Ext. 3). The investigation of the case was later handed over to PW-12 Sudhir Kumar Thakur, who, upon conclusion of investigation, laid the charge-sheet against the appellant. After taking cognizance the records was committed to the Court of sessions and in due course the same came on the file of the learned Trial Judge for disposal. The charges were framed and explained to the appellant to which he pleaded not guilty and claimed to be tried. The appellant declined his involvement in this case and claimed to be innocent.

4. In order to prove his case of alibi the defence also



adduced evidence of Rajendra Sharma (DW1), Madho Singh (DW2) and Rukmani Devi (DW3).

5. To prove the case beyond doubt the prosecution examined 15 prosecution witnesses.

PW-1 Ratneshwar Mandal is the father of the deceased who reached the place of occurrence on getting information about the incident. PW-2 Bhagwati Devi is the mother of the deceased as well as the informant who had travelled to the place of occurrence along with the informant (PW6) and his friend Sonu Kumar Singh (PW7). They had first reached the place of occurrence followed by the father (PW1) and other witnesses. PW-3 Usha Devi is the cousin of the deceased. She got information about the incident through PW-1 and reached the place of occurrence. PW-4 Komal Kumari is the minor daughter of the deceased and the appellant. The deceased had three children. PW-4 was the eldest amongst them. She has deposed as an eye witness to the assault inflicted with knife by the appellant on her mother. PW-5 Jagdish Mandal is the maternal- uncle of the deceased. On getting information on phone, he had also reached the matrimonial home of the deceased. PW-6 is the informant of the case whereas PW-7 is his friend who had travelled along with the informant to the



place of occurrence on the motorcycle in the wee hours of 30th of October, 2008. PW-8 Pappu Mandal is the neighbour of the appellant. He is witness to the inquest report (Ext. 2). PW 9 Sanjay Kumar, PW-10 Ramdeo Mandal, PW-13 Bijay Mandal and PW-15 Ram Vilas Mandal have been declared hostile. PW-11 is the Autopsy Surgeon. As noted above, PW-10 is the first Investigating Officer of the case whereas PW-12 is the Police Officer who had taken over the investigation from PW-14 and, on completion of investigation, laid the charge- sheet.

6. The defence of the appellant which appear from the evidence of defence witness is that he was not present rather he was watching a programme when he got information that his wife was murdered. Thereafter, he came to his house. From the statement of the appellant recorded under Section 313 of the Code of Criminal Procedure (for short 'the Code') it does not appear that any such defence was taken. There is general plea of innocence and false implication.

7. Learned Trial Court found the evidence of PW-4 Komal Kumari truthful and reliable. The medical evidence of Doctor (PW11) corroborated the evidence on record . Placing reliance upon her evidence the trial Court convicted the appellant under Section 302 of the I.P.C. and sentenced him as



stated above.

8. Heard Mr. Ajay Kumar Thakur for the appellant and Mr. S.N. Prasad APP for the State.

9. Submission of the learned counsel for the appellant is that though the Trial Court has relied upon the evidence of PW-4 as the eye-witness of the case but she does not appear to be a competent witness as she is aged about 11 years and before recording her evidence, no certificate was appended by the Trial Court as enumerated under Section 118 of the Evidence Act (for short 'the Act') regarding her competency to understand the questions and giving rational answers. In support of his contention, Mr. Thakur relied upon a decision in a case of *Rameshwar Vs. State of Rajasthan AIR (39) 1952 SC 54*.

It has further been contended that on perusal of the evidence of PW-4 itself, the presence of PW-4 at the place of occurrence does not appear to be free from reasonable doubt as she has stated in her evidence that earlier to the occurrence she was studying in her grandfather's village .Further contention is that apart from the above infirmities there are several inconsistencies in her evidence, as it discloses that the occurrence took place in the upper floor of the house and her mother was sleeping beside her, whereas, the I.O. (PW.14)



found the dead body in the ground floor near the 'Darwaja' of a room. The I.O. has not found any sign of scuffle in the room where the deceased was said to be sleeping nor any blood stain at the place of occurrence was found. Further submission of the learned counsel for the appellant is that had PW-4 been present at the place of occurrence her name ought to have been mentioned in the '*Fardbeyan*' of the informant (PW6), especially when the PW-6 has stated in his evidence that her niece told that her father murdered her mother but the same is not in the '*Fardbeyan*' nor she has been named as the eye witness to the occurrence in the '*Fardbeyan*'. It has been argued that all the above discrepancies demonstrate that she was not present at the place of occurrence. Further contention of Mr. Thakur, is that Hon'ble Apex Court in several judgments, held that the evidence of child witness, not free from inconsistencies and not free from being tutored, conviction should not be based on such evidence in absence of corroboration. He placed reliance upon the following decision of Hon'ble Apex Court:

(i) (2013)5 SCC 705 (Shivasharanappa & Ors. vs. State of Karnataka)

(ii) 1994 CRI. L.J. 1227 (Arbind Singh v. State of



Bihar)

(iii) (2003) 3 SCC 21 (Bhagwan Singh & Ors. v. State of M.P.

10. Conversely, the contention of the learned counsel for the State is that PW-4 is the daughter of the deceased and, in her evidence, she has narrated the story and being the daughter of the deceased her presence at the place of occurrence cannot be doubted. It has further been submitted that she was cross-examined at length but in spite of that there is nothing in her evidence to show that she is a tutored witness. Her evidence is corroborated by the medical evidence i.e. the evidence of the doctor (PW11.).

11 So far submission of the learned counsel for the appellant that there is no certification of the Trial Court before recording the evidence of a child witness in order to show that she has ability to understand the question being put to her and giving rational answer by her is concerned, the same can be assessed on close scrutiny of her whole evidence and omission of not asking those questions and omission of certificate by Trial Court, shall not necessarily render her evidence inadmissible. So far judgments cited by the learned counsel for the appellant reported in the case of ***Rameshwar (supra)*** is concerned, that



relates to non- swearing of oath to a child witness. In the present case the girl is aged about 11 years and she was school going student. She has been cross-examined at length which clearly depicts that she was matured enough to understand the questions and able to answer them in a coherent and precise manner. There is no absurdity. As such, her evidence cannot be termed as inadmissible only because no questions having been put to her by the learned Trial Court to find out her understanding and her ability to answer those questions or on the ground of omission of such certification.

12. It is now well settled that the evidence of child witness cannot be disbelieved only because of his/her being of tender age or minor. Ratio of judgment cited by the appellants in *Bhagwan Singh's case (supra)* and *Arbind Singh's case (supra)* is that if evidence of child witness suffering from material contradictions, appears to be tutored or suffers from inconsistencies on material points, the prudence require the court to seek corroboration, while accepting his/her evidence. Appreciation of evidence of child witness has also been discussed by Hon'ble Apex Court in case of *Shivasharanappa (supra)* cited by learned counsel for the appellant and Hon'ble Apex Court in paragraph no. 17 of the judgment held as under:-



“17. Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say, the corroboration is not a must to record a conviction, but as a rule of prudence, the court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of the witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, apply to a child witness who is competent and whose version is reliable.”

13. Now coming to the evidence of PW-4, on close scrutiny of her evidence, it appears that in her examination-in-chief, she has stated that in the night of 30th of October, 2008, her mother was stabbed by her father. He stabbed six times and she has narrated about the details of assault. She has further stated that she was present at the place of occurrence. Her cross-examination also discloses in paragraph no.3 that she is studying in Guru Kripa Academy which is beside the Police Station at Kahalgaon and presently she is residing with grandmother along with her two brothers. However, in paragraph no.4 of her cross-examination, she has denied that prior to death of her mother, she was living at her grandmother's house. Her evidence in cross-examination reiterates the factum of killing of her mother by the appellant as she has stated that in the dead of



night, she woke up and saw that her father killed her mother, and she had not cried otherwise her father would have killed her also. Her evidence in paragraph no.7 also discloses that she narrated about the same to her grandfather.

14. The learned counsel for the appellant tried to show from her evidence that she was sleeping beside her mother and, in such a situation, no blood stains found on her cloth by the I.O. nor any blood stains found in the room, falsifies her evidence.. Drawing our attention towards evidence of I.O. (PW14) in paragraph no.2 it is stated that there were two rooms on the first floor. In one room there was a bed and in another room there was grains. It is further stated that in the night of the murder deceased was said to be sleeping in that room from where her husband assaulting her, took her downstairs and killed her and her daughter had seen the same. His evidence also discloses that the dead body was found on the ground floor near a room at 'Darwaja'. Contention of appellant on the basis of above evidence of I.O. is that the evidence of I.O.(PW11) is contradictory to the evidence of PW-4 and creates suspicion about her claim of being an eye witness.

15. Competency of this witness can be well assessed from her cross- examination. As noted, she has given a



coherent and rational answer that she had not cried as had she cried at that time, her father would have killed her also. On close scrutiny of her evidence, it appears that though she has stated that on waking up in the dead night, she saw her father killed her mother and her evidence also disclosed that her mother was sleeping near her but that statement does not show that at the time of assault her mother was sleeping on the same bed with her rather she had simply stated that on woke up, she saw her father assaulting her mother. Her evidence also shows that she disclosed about the same to her grandfather (Nana) in the morning. The evidence of PW-1 who is the grand father of PW-4 in paragraph no.7 disclosed that her granddaughter Komal Kumari (PW4) had disclosed her that her father stabbed her mother to death. The above evidence of PW-1 is admissible and corroborates her evidence. It further appears from the evidence of I.O.(PW14) and PW-1 that statement of PW-4 was also recorded by the police during investigation. . The evidence of I.O. also disclosed that the occurrence was seen by PW4. Nothing is available on record to show any discrepancy about her not being present at the place of occurrence at the time of occurrence. There may be some discrepancy regarding minute details of occurrence but those do not rule out her claim of



being an eye witness. Neither PW-4 nor I.O. had been cross examined on the point of her presence nor any suggestion has been given to them that she was not present there and did not see the occurrence.

16. Learned counsel for the appellant has also tried to discredit the evidence of PW-4 on the ground that her name has not been disclosed in the '*Fardbeyan*' of the informant (PW-6), maternal uncle of the PW-4 though, PW-6 the informant has stated in his evidence that his niece has informed him about the stabbing by her father and that falsifies the presence of PW-4. It appears that this PW-6 has been cross-examined on that point and he has categorically stated in paragraph no.5 that in the '*Fardbeyan*' he has not disclosed that her niece Komal Kumari narrated about stabbing by her father to her mother. Besides that, the categorical evidence of PW-4 is that she informed her maternal grandfather(PW1) and her evidence did not disclose that she had informed PW-6, when her maternal grandfather came. The evidence of mother of the deceased (PW2) as well as the informant (PW6) shows that PW-1 has come later on and first of all PW-6 along with PW-2(mother of the deceased) and one Sonu Kumar Singh (PW7) had come at the place of the occurrence, and as such, if her name does not



find place in the '*Fardbeyan*' there is nothing abnormal in that as she had not disclosed the same to PW-6 (informant), when he reached at the home of appellant. There is also nothing abnormal in her such conduct, as due to shock and assemblage of several persons she could not disclose the same to PW-6 or PW-1 or PW-7 on reaching there.

17. Learned counsel for the appellant has also argued that in this case, the prosecution has failed to prove the place of occurrence and also the manner of occurrence as even if the evidence of PW-4 is believed, that disclosed her mother was killed in the first floor whereas the I.O. found her dead body on the ground-floor. Secondly, no mark of blood was found either on the first floor or in the ground floor. Even no blood stain was found in the cloth of PW-4 or on the cloth of the appellant and this clearly improbablize the prosecution story and it appears that she has been killed in some other place and in some other manner. It has also been argued that inquest report (Ext.2) disclosed that a paint and shirt was found near the dead body, but no plausible explanation has been given about that. This also demonstrates that it has been occurred in some other manner.

18. No doubt, the I.O. has not stated about any blood



mark found either on the first floor or on the ground floor or from the place where the dead body was found whereas the postmortem report (Ext.3) shows that she had received six stabbed injuries on different parts of the body and the opinion of the doctor is also that the cause of death is due to shock and haemorrhage. He has also found that all the injuries were ante mortem in nature. PWs 1 to 7 have stated that on getting information they went there and found the dead body there. Evidence of PWs 1 and 7 also shows that there was blood stains on cloth of appellant. PW-8 is the witness of inquest and he has proved his signature. PW's 9,10,13 and 15 have been declared hostile by the prosecution and there is nothing relevant in their evidence for discussion. On close scrutiny of the prosecution evidence the Court finds consistent evidence available on records to demonstrate that the dead body was found inside the house of the appellant. The Court is thus unable to uphold the contention(s) of the defence.

19. The defence has examined three witnesses and from the cross-examination of DWs 1 to 3 it appears that the defence tries to demonstrate that appellant was not present at his home rather he was in a programme in the night and in the wee hours at about 2 to 2.30 A.M. he received information



about the murder of his wife and then he went there. We have examined the evidence of DW-1. He appears to be Sarpanch and his cross-examination disclosed that he has stated all those things in Court for the first time. He has not stated before the police or before the Superintendent of Police. The trend of cross-examination of DW-2 also depicts that he had not gone to the police station to inform about the murder nor he has suggested to Sudhir Mandal to inform about the same. His cross-examination further disclosed that he is for the first time deposing in the Court. DW-3 viz. Rukmani Devi, in her cross-examination, has also stated that her statement was not recorded by the police and she has stated for the first time in the Court. Even according to the evidence of the defence witnesses, appellant came to know about the murder in the wee hours at about 2 to 2.30 A.M. and he went to his house. If it is so the natural conduct of the appellant would have been to inform the police knowing fully well that the death was homicidal but there is nothing available on record to show that either appellant or the DWs tried to inform police. Even no suggestion has been given to the witnesses specially to PW-4 Komal Kumari regarding defence story. This clearly falsified the defence story and it appears to be manufactured one. False



explanation of absence, raised by appellant is a conduct, relevant under Section 8 of the Act and that also goes against the appellant .

20. It has also been argued vigorously by the learned counsel for the appellant that he was present all along at his house , at the time of lodging of the F.I.R. as well as when the police came and had he suffered from a guilty mind, he would have fled from the place of the occurrence and the above conduct falsifies his involvement in this case. However, we are unable to digest the aforesaid submission as it is very difficult to understand the human psychology and the complex human mind. It does not work by mathematical calculation so as to reach to a definite conclusion. Further as discussed above, his so- called defence story, was not found convincing. On the other hand, evidence of PW4 read in the light of other evidence on record clearly goes to show that he was present during the time of occurrence and at the place of occurrence. The dead body was found in appellant's house. The onus is upon the appellant to explain the cause of death of the deceased. Hence non - finding of blood at the place of occurrence and some other discrepancies shown to us by the defence does not falsifies the eye witness account of PW-4 the own daughter of



the appellant.

21. A submission has also been advanced by learned counsel for the appellant that the formal F.I.R. shows that the information was given at about 4 A.M. Informant has also admitted that he had received information about the murder at 3 A.M. in the wee hours and the evidence of informant (PW-6) also demonstrates that after seeing the dead body he had gone to the police station to lodge the case and his statement was recorded by the Darogaji at Police Station whereas in the present case '*Fardbeyan*' (Ext. 1) shows that the same was recorded at the '*Darwaja*' of the appellant that clearly shows that the earliest prosecution version which has been recorded by the I.O. at the Police Station has not been brought on the record which casts serious doubt on the case presented at the trial.

22. On perusal of the F.I.R. as well as the evidence of PW-6 and the '*Fardbeyan*' it appears that the '*Fardbeyan*' (Ext.1) shows that the same was recorded at the '*Darwaja*' of Sudhir Mandal whereas the evidence of the informant shows that his statement was recorded by the police at the Police Station but he has identified his signature on the '*Fardbeyan*' as Ext.1 and the I.O. has stated in his evidence that '*Fardbeyan*' was in his handwriting and signature and he has proved the



same as Ext. 1/1. His evidence also shows that thereafter he has examined the place of occurrence and prepared the seizure list also. No where this I.O. has been cross-examined by the prosecution that the statement of the informant was recorded at the Police Station and not at the 'Darwaja' of the appellant nor any suggestion has been given about another version of informant (PW6) earlier to that which was suppressed by prosecution. The occurrence is of the year 2008 and deposition has been made in the year 2013. In such a situation, if there are some discrepancy regarding recording of the first statement of the informant, to our opinion, this shall not be serious enough to disbelieve the prosecution story as alleged in the '*Fardbeyan*'. There is no material contradiction between the evidence of the informant (PW6) in Court with the '*Fardbeyan*'. The discrepancy regarding timing of initial information is concerned, the possibility of some typing error cannot be ruled out. Furthermore, none of the witnesses had been cross examined on that point. As such, to our opinion, the above discrepancy does not go to the root of the case and the whole prosecution story cannot be brushed aside.

23. Considering the entire discussions made above, it appears that the evidence of Komal Kumari (PW4) narrating



the eye-witness account is acceptable to the Court. She had narrated the occurrence to her grandfather (PW1) immediately after the occurrence which will appear from her evidence and PW-1 has also stated so in his evidence. Hence, her evidence is corroborated by the evidence of PW-1. Her evidence disclosed that the appellant stabbed her mother, six times and her evidence further has been corroborated by the medical evidence of PW-11 who has found six stabbed injuries on the person of the deceased. In spite of her cross-examination at great length there is nothing in her evidence to impeach her credibility. It is well settled law that conviction can be based on the evidence of a solitary child witness if the same, on scrutiny appears to be credible, trustworthy and of unimpeachable in character. Furthermore, her evidence is corroborated by the other evidence also. The evidence of PW4 disclosed that it is the appellant who had stabbed her mother and the defence story that he was not present in the house at the time of occurrence does not appear to be convincing. There is some discrepancy regarding blood not being found near the place of occurrence and on the cloth of the appellant as well as the conduct of the appellant as he remains present after the occurrence. However, once the prosecution has been able



to establish that death was homicidal and he was present at the time of occurrence he has to explain the circumstances under which the deceased was murdered, as the dead body was found inside the house . No plausible explanation has been given for her death except that he was not present which was not found believable. In such view of the matter above incriminating circumstances firmly establish the guilt of the appellant.

24. In the light of discussions above, the conviction of the appellant under Section 302 of the IPC by the learned Trial Court does not suffer from any legal infirmity .

25. Accordingly, the appeal is dismissed. Conviction and sentence of the appellant is affirmed.

(Kishore Kumar Mandal, J)

I agree.

(Vinod Kumar Sinha, J)

shyambihari/-

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