

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.956 of 2013

Against the judgment of conviction dated 6th of August, 2013 and order of sentence dated 7th of August, 2013 passed in Sessions Trial No.617 of 2013 Arising Out of PS. Case No.-113 Year-2011 Thana- Munger Muffasil District- Munger, by the Sessions Judge, Munger.

Birbal Pal, son of late Radhey Pal, resident of village- Gulalpur, P.S. Muffsail, District Munger.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Soni Srivastava, Advocate

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

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-09-2017

The appellant herein calls in question the judgment dated 6th of August, 2013 passed by the Sessions Judge, Munger in Sessions Trial No.617 of 2011 whereby he is convicted to undergo life imprisonment for an offence under Section 302 of the Indian Penal Code with regard to intentionally causing the death of deceased Sanju Devi, wife of Surajdeo Pal, by hitting her with a *Kulhari* on the head.

It is the case of the prosecution that Surajdeo Pal, P.W.6, the informant and husband of the deceased, filed an FIR to the effect that on 14.06.2011, the accused Birbal Pal had constructed a fence



on a land which was near to his house and in view of this at 4.30 A.M. in the morning on 15.06.2011, his wife, deceased Sanju Devi, had questioned Birbal Pal as to why he had done so. It is said that getting annoyed with such a query made, the accused went to his house, got hold of *Kulhari* and assaulted Sanju Devi with the *Kulhari* (Axe) on the left side of her head. It is said that the informant, P.W.6, was standing on the roof top of his house from where he saw the incident. Sanju Devi fell on the spot and along with co-villager she was taken to the hospital where she is said to have died on 23.06.2011 while undergoing treatment.

On the basis of the aforesaid allegation, the prosecution was launched, the following witnesses were examined:

P.W.1 Ghanshyam Pal, P.W.2 Kare Pal @ Bijay Kumar Choudhary, who did not support the case of the prosecution and was declared hostile, P.W.3 Dr. Bijay Kumar, P.W.4 Shivchand Kumar Pal @ Upendra Pal, P.W.5 Raghunandan Pal, again declared hostile, P.W.6 Surajdeo Pal and the Investigating Officer, P.W.7 Sudama Rai.

As far as P.W.1 Ghanshyam Pal is concerned, he has not witnessed the occurrence, but came to the spot after the incident had taken place and he saw Sanju Devi lying there with a head injury and blood oozing. All the persons present there told him to



take Sanju Devi to the Hospital. He saw that Sanju Devi was alive at the time when the incident took place. She was taken to the hospital for treatment and it is said that during the course of treatment she died. He specifically says that he has not seen who assaulted the deceased, but implicated the appellant on the basis of information given to him by the villagers present there.

P.W.3, the doctor, who had conducted the postmortem, speaks about the deceased sustaining lacerated wound over parietal region of skull 3"x 2" deep to cranial cavity. He says that brain matter was coming out through the wound. Another wound was a lacerated wound over the left ear 1"x 2" posterior to left pinna. This wound was skin deep. He says that the death was due to the shock. However, he further says that all the injuries could also be caused due to fall from a height of 20' on the rough surface.

P.W.4 Shivchand Kumar Pal @ Upendra Pal also speaks about having come to the spot when his wife told him about the incident and the commotion in the nearby locality and he said to have Sanju Devi lying on a cot. This witness also does not say anything about the occurrence.

P.W.6 Surajdeo Pal is the informant and is the only eye witness to the entire incident. P.W.7 is the Investigating Officer.



Learned counsel representing the appellant took us through the statements of various witnesses and vehemently argued that it is a case of false implication. The incident never took place. The deceased fell down and sustained injury and, therefore, the case of the prosecution is not proved. She further refers to the statement of the doctor to say that possibility of the injury being sustained on a fall being accepted by the doctor, it is a case where the prosecution has failed to establish the claim.

However, she vehemently argued by taking us through the statement of the accused Birbal Pal recorded under Section 313 of the Code of Criminal Procedure and placing heavy reliance on the following judgments of the Hon'ble Supreme Court in the case of **Ranvir Yadav v. State of Bihar** [(2009) 6 SCC 595]; **Tara Singh v State** [AIR 1951 SC 441]; and **Sukhjit Singh v State of Punjab** [(2014) 10 SCC 270] to canvass a contention that if the accused statement under Section 313 of the Cr.P.C. has not been recorded properly, if he has not been confronted with the incriminating materials available against him and is not put questions to explain these materials, then the requirement of Section 313 Cr.P.C. is not fulfilled and this tantamounts to a serious lapse on the part of the trial court making the entire conviction vitiated. She argues that



apart from various lacunae in the prosecution, this aspect of the matter vitiates the entire trial.

We have heard learned counsel for the parties at length and even though we do find some discrepancies in the statement of witnesses which were pointed out to us during the course of hearing, but we are of the considered view that in this case the entire trial stands vitiated in view of the law laid down in the case of **Sukhjit Singh** (supra); **Ranvir Yadav** (supra) and **Tara Singh** (Supra).

Before advertng to consider the factual aspect of the matter in this regard, i.e. the manner in which the statement of accused under Section 313 Cr. P.C. is recorded, it would be apt to deal with the law laid down by the Hon'ble Supreme Court with regard to requirement as are envisaged under Section 313 of the Cr. P.C.

In the case of **Ranvir Yadav** (supra), it has been laid down by the Hon'ble Supreme Court that the purpose of Section 313 Cr.P.C. if scrutinized in its entirety would establish that it contemplates bringing to the notice of the accused incriminating materials available against him and thereafter putting questions to him based on these materials, it is held by the Hon'ble Supreme Court that the requirement of Section 313 Cr.P.C. is not an empty formality. It is held in the said case that the incriminating material,



if not brought to the notice to the accused and is not given an opportunity to explain the same, tantamounts to a serious lapse on the part of the trial Court making the entire conviction based on such a trial vitiated in law.

In the case of **Tara Singh** (supra), the provision as is existed in the year 1951, i.e. Section 342 Cr.P.C. was taken note of and it has been held that it is not proper compliance of this statutory provision by merely reading out questions and putting them to the accused and directing him to answer. It is held that the whole object of the Section is to afford to the accused a fair and proper opportunity to explain the circumstances which appear against him and it is held that if the requirement of this Section is not properly complied with, the error is so gross that it causes grave prejudice to the accused.

Both the aforesaid cases and two more cases of the Hon'ble Supreme Court on the issue in question, namely **Hate Singh Bhagat Singh v. State of Madhya Bharat** [AIR 1953 SC 468] and **Ajay Singh v. State of Maharashtra** [(2007) 12 SCC 341] have been considered by the Hon'ble Supreme Court in the case of **Sukhjit Singh** (supra) and the Hon'ble Supreme Court after evaluating the legal principle has held that the whole object of Section of 313 Cr.P.C. is to afford to the accused a fair and proper



opportunity of explaining the circumstances which appear against him and, therefore, the questions put to him must be fair and must be couched in a form that he is able to appreciate and understand them and explain them. The purpose of this section is to draw an attention of the accused to the specific point in the charge and in the evidence which has come against him and he should be granted an opportunity to explain the same. The Hon'ble Supreme Court holds that if this requirement of law is not met, the entire trial stands vitiated and conviction unsustainable.

That being the legal position, we are now required to consider as to how and in what manner the aforesaid requirement of law was followed in this case and if the statement of the accused recorded under Section 313 Cr.P.C. available on record is analyzed it would be seen that after the case of the prosecution was closed on 20th of May, 2013, the examination of the accused as required under Section 313 Cr.P.C was undertaken and his statement has been recorded in the following manner:-

(a) The first question put to him was as to whether he has heard the evidence given by the witnesses in this case. He answers by saying 'Yes'.

(b) The second question put to him was to the effect that it is alleged against him that on 15.06.2011 in the morning at 4.30 a.m. in the particular village under a particular police station, he assaulted Sanju



Devi, wife of the informant, on the head with an axe resulting in causing injury to her whereby she died. He is asked as to what he has to say about it and he says he has nothing to say about it.

(c) The third question put to him was in defence what you have to say. He denies the allegation.

This is in totality the statement recorded under Section 313 Cr. P.C. The incriminating materials which came on record against the accused were never put to him. He was not given an opportunity to explain the circumstances which appear against him and in a very casual manner without following the due process of law and without meeting the requirement of law in this regard, as laid down by the Hon'ble Supreme Court in the judgments referred to hereinabove, the accused statement under Section 313 Cr. P.C. was recorded in the present case. This, in our considered view, is sufficient enough to vitiate the entire trial and we have no hesitation in holding that on this count alone, the appellant is liable to be acquitted and the judgment set aside as the trial stands vitiated for non-compliance with the aforesaid statutory requirement of law.

In view of the above, we allow the appeal, set aside the judgment of conviction dated 6th of August, 2013 and direct for



setting free the appellant forthwith, if not required, in any other case.

Before parting, we appreciate the assistance granted to us by Ms. Soni Srivastava, the learned *Amicus curiae*, at the time of hearing.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	AFR
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