

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.416 of 1994
(Against the judgment of conviction dated 12.08.94, and order of sentence, dated 16.08.94, passed by Shri Mithilesh Kumar Singh, 3rd Additional Sessions Judge, Vaishali at Hajipur in S.T. No. 268/87)

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1. Suresh Singh son of Manchit Singh
2. Manchit Singh son of late Palat Singh
3. Ram Dulari Devi wife of Manchit Singh, all residents of village- Digha Fatepur,
P.S. Baligaon, District-Vaishali.

.... Appellants

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Miss S.B. Verma, Amicus Curiae

For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

Date: 04-01-2018

Three appellants in the present criminal appeal have challenged the judgment of conviction in Sessions Trial No. 268 of 1987 passed by third Additional Sessions Judge, Vaishali dated 12.8.1994 whereby the appellant Suresh Singh has been convicted under section 302 of the Indian Penal Code and the appellant Manchit Singh and Ram Dulari Singh have been convicted under section 302/34 of the Indian Penal Code.

2. The prosecution case in brief is that on 16.8.86 at about 8.15 A.M., the informant's brother Shiv Narain Singh @ Bir Singh (deceased) and one Ram Sharan Singh went to the house of Saryug Singh for collecting contribution of Brahmpuja. At that time



Saryug Singh was grazing his she-buffalo on road side in front of his house. It is alleged that accused Manchit Singh his wife and his daughter Pramila Devi were abusing Saryug Singh for grazing she-buffalo on the road. The informant was also present there. There was some altercation between Saryug Singh and the accused persons. In the meantime, Ramji Singh also came there. The informant and his brother Shiv Narain Singh (deceased) and Ram Sharan Singh prohibited the accused persons for abusing resulting in altercation between them. Ramji Singh instigated Suresh Singh to kill. At this, the accused Suresh Singh and Manchit Singh rushed to their house and came with Bhala and Farsa respectively. The wife of Manchit Singh Ram Dulari Devi and daughter Pramila Devi came there with Sota and pistol respectively. It is further alleged that at the order of Ramji Singh the accused Suresh Singh hurled Bhala blow on the deceased Shiv Narain Singh which hit him on the left side of his chest. The deceased fell down and became senseless. There was profuse bleeding from his chest. In the meantime, the wife of Manchit Singh assaulted on the head of the deceased with Sota. It is further alleged that Ramji Singh further instigated the accused persons to assault the informant. Thereupon, the accused Suresh Singh hurled Bhala blow on his neck as a result he sustained minor injury on his neck. The occurrence was seen by Saryug Singh, Ram Narain Singh, Ram Sharan Singh, Ram Bilash Singh, Ruplal Singh and Gulab



Chandra Singh etc. The informant and co-villagers brought the deceased to health centre Bangara where he was declared dead.

3. The police after investigation submitted charge-sheet against the accused persons. However, Ramji Singh who is alleged to have instigated the appellant Suresh Singh in committing the murder was not sent up for trial.

4. After cognizance, the case was committed to the court of sessions. On framing of charges, the accused persons pleaded not guilty and as such they were sent up for trial by the third Additional Sessions Judge, Vaishali at Hajipur.

5. On behalf of the prosecution 11 witnesses were examined. Out of 11 witnesses, P.W.1 is Ramsharan Singh, P.W.2 is Ram Narain Singh, P.W.4 is Saryug Singh and P.W.5 is the informant who claim to be eye-witnesses.

6. P.W.6 is S.I. who recorded the Fard-beyan of the informant. P.W.7. He is a formal witness. P.Ws. 8 and 9 have been tendered. P.W.9 is the formal witness who proved the inquest report. P.W.10 is the doctor who conducted post-mortem of the deceased. P.W.11 is the Mukhiya of the adjacent village.

7. On behalf of the defence D.W.1 Ujawal Kumar Banerji is the doctor who was examined on the point that accused Ram Dulari Devi sustained injury on the alleged date of occurrence. D.W.2 the accused Manchit Singh. D.W.3 Kripal Prasad Sahu is the



formal witness who proved the 'Sanha' lodged by the appellant Manchit Singh.

8. The trial court on scrutiny of the evidence convicted the appellant Suresh Singh for offence under section 302 and also convinced the appellant Ram Dulari Devi and Manchit Singh under section 302/34 of the Indian Penal Code and they have been sentenced to undergo R.I. for life. However, the period of detention already undergone as under trial prisoner was directed to set off against the period of imprisonment for life.

9. Learned counsel appearing on behalf the appellant as Amicus Curiae submitted that on 16.8.1986 P.W.11 gave written report to the police at about 9 A.M. that he saw one person running away from South to North followed by Ram Narain and others that person running away has committed murder of Bir Singh and it is alleged that with the help of villagers the person fleeing away was intercepted who disclosed his name as Suresh Singh, the appellant in this case. The police thereafter started investigation and registered Baligaon P.S. Case under section 302/34 of the Indian Penal Code.

10. Learned counsel appearing on behalf of the appellants submits that on the next date of occurrence at the instance of the S.P., Vaishali the statement of P.W.5 Ram Narain Singh was recorded and P.W.5 has asserted a different story about the occurrence. In his statement the story was introduced that the victim



with one Ram Sharan Singh has gone to collect contribution of 'Brahmpuja' at the relevant time from the house of Saryug Singh (P.W.4) while Saryug Singh was grazing his she buffalo on the road in front of his house, the appellants Ram Dulari Devi and Pramila Devi wife and daughter of the accused Manchit Singh were abusing Saryug Singh for grazing she Buffalo and as such an altercation took place. It is alleged that in the meanwhile, Ramji Singh intervened and at his instigation the appellant no.1 and 2 came with Bhala and Farsa and accused Pramila Devi came with Sota and pistol and gave Bhala blow on the deceased as a result Sheo Narayan Singh on receiving such injury, fell down, thereafter, appellant Ram Dulari Devi gave Sota blow on the head of the victim.

11. Miss Verma submitted that the alleged instigator of the case Ramji Singh has not been sent up for trial in this case whereas Pramila Devi was acquitted by the trial court. She submitted that in the instant case the occurrence was allegedly witnessed by Saryug Singh, Ram Narain Singh, Ram Sharan Singh, Ram Bilash Singh, Ruplal Singh and Gulab Chandra Singh and others. However, the prosecution has not examined these witnesses without any cogent reason. Therefore, she submitted that withholding the material witnesses and adopting pick and choose by the prosecution in the examination of witnesses, goes against the prosecution. She reiterated that allegation was levelled against Pramila Devi and Ramji Singh and



in the instant case the police after investigation did not send up Ramji Singh for trial whereas the trial court has acquitted Pramila Devi.

12. Referring to the prosecution case, Miss Verma submitted that out of 24 witnesses named in the charge-sheet, without any explanation 13 witnesses were not examined and as such she submitted that the court is required to draw adverse inference for non-examination of material witnesses and pick and choose of the witnesses. She referred to the infirmity in the prosecution case in as much as Choukidar of the case who informed about the occurrence to the police, his statement has not been brought on record. Referring to the other witnesses, she submitted that P.W.7 and 8 has been tendered in this case. She also submitted that non-consideration of the evidence or the appellant 3 also goes against the prosecution as the doctor has examined the appellant no.3 and found injury on the appellant no.3 as grievous.

13. Mr. Abhimanyu Sharma appearing on behalf of the State submitted that the trial court has committed no error in convicting the appellants. It is true that from the material available on record, it appears that there are major contradictions in the version of the occurrence by P.W.11 at whose instance Fard-beyan was lodged on 16.8.1986 and the statement of P.W.5 was recorded on the next date of occurrence i.e. 17.8.1987 in the manner of commission of crime.



14. On perusal of the record, it also transpires that police after investigation has not sent up Ramji Singh who is alleged as instigator in the instant case and on whose instigation, the accused persons assaulted the victim and the informant.

15. We find that many of the material witnesses were not examined on behalf of the prosecution. Out of 24 charge-sheet witnesses, 13 witnesses were not examined without assigning any reason for their non-examination. In addition thereto, from the materials available on record, it appears that on account of land dispute between the informant and the appellants as the informant has mentioned motive in the Fard-beyan, it also appears that the before the actual occurrence of assault there were altercation between the informant and the appellants on account of grazing of she buffalo on the road in front of the house of P.W.4.

16. In the instant case, the trial court has completed formality while examining the accused persons under section 313 Cr.P.C. The Apex Court has time and again reiterated that the requirement under section 313 Cr.P.C. is not an empty formality. Reference in this case made to the judgment of the Apex Court reported in (2014)10 SCC 270 at para-11 to 14 which reads as follows:

11. In this context, we may profitably refer to a four-Judge Bench decision in Tara Singh v. The State² wherein, Bose, J. explaining the significance of



the faithful and fair compliance of Section 342 of the Code as it stood then, opined thus:

"30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to 1 (2009) 6 SCC 595 2 AIR 1951 SC 441 be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily



appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice."

12. In Hate Singh Bhagat Singh v. State of Madhaya Bharat, Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the code expressed thus:- "8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal P.C. are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused, person is not allowed to enter the box and speak 3 AIR 1953 SC 468 8 Page 9 on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness-box."



13. The aforesaid principle has been reiterated in Ajay Singh v. State of Maharashtra following terms:

"14. The word "generally" in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give." 4 (2007) 12 SCC 341

14. In view of the aforesaid enunciation of law, there can be no scintilla of doubt that when the requisite questions have not been put to the accused it has caused immense prejudice to him, more so, when



there is no evidence to establish his complicity in the alleged abduction.

16. Thus, from the perusal of the record it is seen that the trial court has not complied with the mandatory provisions of examining the accused under section 313 Cr.P.C. as the trial court has not confronted with the accused persons with the adverse circumstance particularly on which the trial court has based judgment of conviction and thus, we find infirmity in the conduct of the trial. In addition thereto, we find substance in the submission of the learned Amicus Curiae that the prosecution has made pick and choose and the material witnesses were not examined without any cogent reason. However, from the record, it transpires that appellant no.1 has remained in custody in a case of sudden fight following altercation on account of grazing of she buffalo and the background that there was land dispute between the parties, the judgment of conviction under section 302 of the Indian Penal Code is unsustainable when the prosecution case on its face value if accepted from the material available on record, it appears that the present case falls under section 304-II. The appellant no.1 has remained in custody for nearly six and half years. The incident is of 1986 and the present appeal remained pending for the last 23 years.

17. Since in the instant case the accused Pramila Devi was acquitted and the instigator Ramji Singh has not been sent up, the



only allegation is against the appellant no.1 of giving single Bhala blow and from the post-mortem report, it also transpires that there is one incised wound 1/2”x1/3”which has caused the death. The other injury from hard blunt substance is simple in nature.

18. Thus, in the totality of facts situation, we partly allow the appeal and modified the judgment of conviction from section 302 of the Indian Penal Code to 304-II of the Indian Penal Code and considering the fact that the matter remained pending for the last 23 years in the appeal, we reduce the sentence as period undergone.

19. Since the appellants are on bail, they are discharged from the liability of bail bonds.

(Rajendra Menon, CJ)

Ravi/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
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