

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.580 of 2004

Arising Out of PS.Case No. -null Year- null Thana -null District- BHAGALPUR

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Most. Gayatri Devi resident of village Chandpur, P.S. Sanhoula, District
Bhagalpur.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Ajay Thakur, Adv.
Mr. Ranjan Kumar Jha, Adv.
Mr. Mritunjay Kumar Mishra, Adv.
For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 27-09-2018

1. This appeal is directed against the judgment and order dated 11.8.2004 passed in Sessions Case No.346 of 1991/220 of 2002 by Sri Mohd. Manzoor Hassan, Additional Sessions Judge, Fast Track Court, Bhagalpur, by which the sole appellant has been convicted under Section 306 of the Indian Penal Code and acquitted from the charges under Section 302 of the IPC and sentenced to undergo R.I. for seven years and a fine of Rs.500/- and in default, S.I. of one month.

2. The appellant died during the pendency of the appeal and Most. Gayatri Devi wife of the appellant, vide order dated 30.11.2017 has been substituted in place of him.

3. The prosecution case in short is that the informant



Haldhar Prasad Singh (P.W.9) gave his fardbeya before the Police at the house of his *Phua* (sister of his father) Kamla Devi at about 08:00 P.M. in the evening that in the night of 22nd and 23rd of April, 1989 he heard *hulla* and he woke up on that *hulla*, which was coming from the room of his cousin sister and he reached there and asked his *Phuphera Bahnoi*, who is appellant in this case to open the door and pushed the door but the door was not opened and his sister Minakchhi Devi was crying inside the room and was uttering about setting of fire after pouring kerosene oil on her body and she was also crying for her safety. He entered into the room through another door and found her *Phupheri* sister Minakchhi Devi burning, in the meantime, his *Phuphra Bahnoi* escaped from there after opening the door, he took her sister in the *Aangan* and noticed smell of kerosene oil coming from her body. On *hulla* the neighbours assembled there and extinguished the fire and her sister was uttering that she has been burnt. Further case is that his *Bahnoi* in the night went to the house of Saraswati Devi and on return he started quarrelling with his sister and closed the door from inside and set her on fire. His sister Minakchhi Devi died in the hospital during the course of her treatment for which U.D. Case No.7 dated 23.4.1989 was registered. He also alleged that his *Bahnoi* had illicit relation with Saraswati Devi and Mona Kumari. It is also his case that after four days of Holi,



the appellant had threatened his *Phua* (sister of his father) to kill Minakchhi Devi, if Kamla Devi would not transfer the building in his name. He has also stated that as she could not heed on the threatening given by Ramdhari Singh appellant, he killed his wife.

4. On the basis of the fardbeyan of the informant, Sabour P.S.Case No.85(4) of 1989 was registered and the police after investigation submitted charge-sheet under Section 304B and 498 A of the Indian Penal Code, cognizance was taken and the case was committed to the court of sessions, which ultimately came to the file of Sri Mohd. Manzoor Hassan, Additional Sessions Judge, Fast Track Court, Bhagalpur for trial and disposal.

5. During the trial accused-appellant, Ramdhari Singh was charged under Section 302 of the IPC and to substantiate its case, prosecution examined 10 witnesses, they are P.W.1 Kamla Devi – mother of the deceased , P.W.2 Lakhan Lal Singh- neighbour, P.W.3 Jairam Mandal- tenant , P.W.4 Dr. Kailash Jha- who has conducted the post mortem of the dead body of the deceased, P.W.5 Chousa Devi- grand mother of the deceased , P.W.6 Kanchan Kumari- daughter of the deceased, P.W.7 Dashrath Pd.Sah- neighbour , P.W.8 Shankar Verma- tenant, P.W.9 Haldhar Pd.Singh – informant and cousin brother of the deceased (*Phuphera Bahnoi*) and P.W.10 Mahtab Alam – formal witness. The I.O. has not been



examined in this case.

6. On behalf of the defence also one witness has been examined Dr. Manoj Kumar who has treated the appellant in the hospital. Apart from that U.D. Case which was earlier lodged has been brought on record as Ext. A and the Injury Report and the discharge slip of accused appellant have been brought on record as Ext. B & C respectively.

7. Apart from the above oral evidence, following documents have been brought on record as Ext. I signature of Lakhan Lal Singh on the seizure list, Ext. 1/1 signature of Jairam Mandal, Ext. 2 postmortem report, Ext.3/1 signature on the inquest report, Ext. 3/2 signature on the fardbeyan and Ext. 4 Fardbeyan.

8. The defence of the accused person as per statement under Section 313 of the Cr.P.C. is that he has been falsely implicated in this case in order to grab the property by the informant and he has himself received injuries in course of saving his wife.

9. The learned trial court on conclusion of the trial has not found the appellant guilty under Section 302 of the IPC, however, convicted the appellant under Section 306 of the IPC.

10. Being aggrieved by the aforesaid judgment, the learned counsel for the appellant has assailed the judgment on the ground that in this case there is inordinate delay in lodging the FIR as



the occurrence is in between the night of 21st and 22nd April, 1989 but the fardbeyan was recorded on 11.5.1989 and that delay has not been explained and if the same is considered in the background of the fact that there is an U.D. case lodged earlier on 22.4.1989 itself, which is contradictory to the statement of the informant in the fardbeyan, whole prosecution case does not appear to be free from reasonable doubt. Further submission of the learned counsel for the appellant is that the appellant was residing in her *Sasural* and the evidence of mother-in-law and the other witnesses discloses that he has also received injuries and that will also appear from the evidence of P.Ws. 2 , 3, 7 & 8 and evidence of P.Ws. 2 and 7 also discloses that while taking Minakchhi Devi to Hospital, she enquired about the condition of accused appellant and their evidence belies the prosecution story. Further the evidence of P.W.9 (informant) in para 22 also discloses that he had seen the appellant in the hospital, as such the appellant has himself received injuries while saving his wife and he has been falsely implicated in this case.

11. Further submission of the learned counsel for the appellant is that he has been falsely implicated in this case at the instance of the informant to grab the property, which will also appear from the evidence in para nos. 13 and 14 of P.W.9 which discloses that the building of Kamla Devi (mother of the deceased) had been



purchased by the father of the informant in the name of his brother on 29.6.1994 and on 7.7.1994 Kamla Devi died and the above evidence supports the defence case that he has been falsely implicated in this case in order to grab the property of Kamla Devi and that is the reason behind filing of U.D. case first lodged by the police but subsequently after 19 days Informant's fardbeyan has been recorded, on the basis of which present case has been lodged and that U.D. Case was found true, which appears from the evidence of P.W.9 in para 8 and that clearly shows that the whole prosecution story is manufactured one.

12. Further submission of the learned counsel for the appellant is that in this case there is no evidence to show that the appellant has abetted in any way to the deceased to commit suicide and whereas the prosecution tried to show that the appellant has killed the deceased by pouring k.oil and setting her on fire, however the charges under Section 302 of the IPC have not been found established by the learned trial court and he has been convicted under Section 306 of the IPC whereas there is no materials to show that the appellant has abetted his wife to commit suicide. Moreover, no such question was put to the informant under Section 313 of the Cr.P.C. rather statement under Section 313 of the Cr.P.C. discloses that question was put to the effect that he has killed the deceased by



pouring K-oil and setting her on fire, as such there is no compliance under Section 313 of the Cr.P.C. It has also been argued that there is contradictions in the evidence of the witnesses and earlier an U.D. Case had also been lodged and the seizure list was also prepared but the I.O. has not been examined as such the defence has got prejudiced due to non-examination of the I.O. as he could be cross-examined on the point of U.D. Case and also as to how and on what information the case has been lodged after delay of 19 days.

13. On the other hand the learned counsel for the State has justified the conviction on the ground that the witnesses including the daughter of the deceased and the grand mother of the deceased as well as the informant, who were present there clearly stated that the appellant and deceased were sleeping inside the room and there was *hulla* and the deceased was found burning and evidence of the daughter of the deceased P.W.7 discloses that her father caught hold to the deceased and she was burning as such the conviction of the appellant under Section 306 of the IPC is just and proper and it does not require any interference by this Court.

14. In the aforesaid background of the submission of the parties and on perusal of the evidence, it appears that the occurrence is of 21st and 22nd April, 1989 but the fardbeyan was recorded on 11.5.1989 and prior to that an U.D. Case (Ext.A) had



been lodged on the statement of the Informant (P.W.9) which gives a complete different story which discloses that on *hullah* P.W.9 had broke open the door, brought both i.e. deceased and appellant out of the room, both were in injured condition and his sister died during treatment whereas accused appellant is unconscious. P.W.9 has also been cross examined on filing of UD. Case but he has stated that he has not stated before the police that the appellant and his sister was sleeping in a room and thereafter there was *hulla* and he broke open the door and he brought both the persons out of the house and both of them were badly burnt and they were brought to the hospital for treatment and his sister died in the hospital and his brother-in-law is in unconscious and in injured condition. He has also stated in para 31 of his evidence that the police has not examined him in the hospital on 22.4.1989 and he has not given any statement before the police on 22.4.1989. However, he admitted that his signature was taken in the hospital but he did not see the paper and further in between 24.5.1989 and 11.5.1989 he has not disclosed anything. Considering the evidence discussed above, there appears some reasonable doubt about credibility of P.W.9.

15. While considering his evidence in the background that the FIR has been lodged after 19 days, evidence of P.W.9 does not appear to be free from embellishment. Moreover, the accused



appellant in his statement under Section 313 of the Cr.P.C. has stated that he has been implicated in this case by the informant in order to grab the property and evidence of P.W.9 in para 13 and 14 discloses that his father has purchased the house of Kamla Devi (Mother of the deceased) on 29.6.1994. The above fact certainly supports the defence case of accused appellant.

16. In the aforesaid background, non-examination of the I.O. certainly appears to have caused prejudice to the defence as had he been examined, he would have thrown light on the lodging of U.D. case and also on delay in lodging the FIR of 19 days.

17. The Hon'ble Apex Court in the case of ***Harbeer Singh V. Sheeshpal*** reported in AIR 2016 SC 4958 at para 15 has held as follows :-

“Moreover, it has also come in evidence that there was a delay of 15-16 days from the date of the incident in recording the statements of P.W.3 and P.W.9 and the same was sought to be unconvincingly explained by reference to the fact that the family had to sit for shock meetings for 12 to 13 days. Needless to say, we are not impressed by this explanation and feel that the High Court was right in entertaining doubt in this regard.

18. Hon'ble Apex Court further in the case of ***Jai Prakash Singh V. State of Bihar*** reported in 2012 Cri.L.J. 2101 has held in para 12 as follows :-

The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon



prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye- witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.

19. In the present case, no explanation for delay in lodging the FIR has been given by the informant.

20. No doubt P.W.1 though is not eye witness of the occurrence but her evidence discloses that her daughter was badly burnt and she told that her husband had sprinkled K-oil and set her on fire. P.W.6 is the daughter of the deceased and her evidence also discloses that her father had caught hold to his mother and *Mummi* was burning, however, on the other hand the evidence of P.W.2, who is prosecution witness discloses that when he came to the house of P.W.1 Kamla Devi he found Ramdhari Singh in burnt condition and his wife was also in burnt condition. His evidence further discloses that they were taken to the hospital and on way the deceased was asking about the condition of the appellant. This witness has not been



declared hostile. Evidence of P.W.3 also discloses that when he came to the house of Kamla Devi, he saw that Ramdhari Singh has also received injuries and he was unconscious and he was also taken to the hospital along with his wife Minakchhi Devi. P.W.5 is the grand mother of the deceased, who has disclosed that she heard *hulla* that Minakchhi Devi has burnt. P.W.5, who has been tendered for cross-examination, discloses that he saw Ramdhari Singh and his wife in burn condition and they were taken to the hospital and she was in conscious condition and asking about the condition of the appellant, which shows that both the deceased and her husband had received injuries and they were taken to the hospital and the deceased was asking about the condition of the appellant and those witnesses have not been declared hostile. P.W.8 has also stated that the appellant and the deceased were in the burnt condition.

21. D.W.1 is the Doctor who has been examined by the defence and he has proved the injury report of Ramdhari Singh appellant and found 50 % burn injuries over the front, back and chest and abdomen and in the right hand and he was in the emergency ward in his hospital. His evidence also discloses that *Darogajee* has referred the appellant.

22. Considering the discussions made above, there are two sets of evidence available on the record- evidence of P.Ws. 1, 5,



and 6 who are mother, grand mother and daughter of the deceased shows that Minakchhi Devi has been set on fire. No doubt P.W.1 is not the eye witness of the occurrence and evidence of P.Ws.1 and 5 discloses that Minakchhi Devi has disclosed that she was set on fire and evidence of P.W.6 also discloses that her father caught hold of her *mummy*, however, nothing found mentioned in U.D.Case and even in fardbeyan (Ext.4). Moreover, no information was lodged by P.Ws.1 and 5. Moreover P.W.6 is living along with P.W.9 informant and her being tutored, can not be ruled out, however on the other hand evidence of P.Ws. 2, 3, 7 and 8 who appears to be independent witnesses disclosed that both were found in burnt condition and Minakchhi Devi was enquiring about the condition of the appellant and D.W.1 is the Doctor who has treated the appellant, has found 50 % burn injuries over the person.

23. P.W.4 is the Doctor who has conducted postmortem examination and he has found ante mortem burn injuries. He has found epidermal burn about 50 % of body surfaces, excepting both feet, most parts of the palm and patches. The viscera report was preserved for chemical analysis.

24. Considering in totality, it appears that there is delay in lodging the FIR that has not been explained whereas there is an U.D.Case as Ext.A that discloses different story and suggests that



the appellant has also received injuries. The aforesaid story found support from the evidence of P.Ws. 2, 3 7 and 8 and their evidence also shows that the deceased was very much concerned about the condition of the appellant as the appellant has also received 50 % burn injuries and further as discussed above, after death, the building of the mother of the deceased was purchased by the father of the informant and in the statement recorded under Section 313 of the Cr.P.C. there is specific statement of the appellant that he has been implicated in this case for grabbing the property.

25. Apart from that the learned trial court has not found charges under Section 302 of the IPC established whereas found the case under Section 306 of the IPC i.e. committing suicide.

26. The accused appellant has been examined under Section 313 of the Cr.P.C. and in the statement under Section 313 of the Cr.P.C. he has been asked only these questions – 1. Have you heard the evidence and 2. There is evidence of the witnesses that on 22.4.1989 at about 3/4 A.M. by pouring K.oil on the body of Minakchhi Devi, he had set her on fire, which he has denied and further question is that what he has to say in his defence. Though accused appellant has been convicted under Section 306 of the IPC but no question has been asked as to whether he abetted the deceased for committing suicide or abetted her any of the action for



commission of the suicide, as such it appears that no circumstances have been put to show that she has been abetted to commit suicide.

27. Hon'ble Apex Court in the case of *Sukhjīt Singh V.State of Punjan reported in (2014) 10 SCC 270* has considered this aspect of the matter and has held *in para 10, 11 and 13* as follows :

10. On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr. Talwar, has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in Ranvir Yadav v. State of Bihar. Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts serious lapse on the part of the trial Court making the conviction vitiated in law.

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 reported in (2007) (12) SCC 341 at para 14 as follows:

"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.

28. As discussed above, in the case at hand there is likelihood of prejudice to the appellant.

29. Considering the discussions made above, it appears that impugned judgment suffers from infirmities as stated above and the learned trial court has not considered those infirmities while convicting the appellant.

30. In that view of the matter, the appellant is entitled for benefit of doubt in this case.

31. Accordingly, this appeal is allowed and impugned judgment and order are set aside.

(Vinod Kumar Sinha, J)

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