

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 580 of 2008

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Meena Devi wife of Late Mulk Raj Paswan, resident of Village – Konchriaon,
Police Station – Bagen Gola, District – Buxar.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s	:	Mr. Nil Kamal, Advocate Ms. Kumari Priyanka, Adv.
For the Respondent/s	:	Mr. Satya Narayan Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 18-06-2018

The sole appellant was held guilty for committing murder of her husband with the help of other accused persons. The appellant was tried in Sessions Trial No. 429 of 2006 by learned Additional District & Sessions Judge-cum-Fast Track Court-I, Buxar (hereinafter referred to as ‘Trial Judge’) and she was held guilty and convicted on 31-03-2007 for commission of offence under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as ‘I.P.C.’) and Section 27 of the Arms Act, 1959 (hereinafter referred to as ‘Arms Act’). By order dated 04-04-2007, she was sentenced to undergo imprisonment for life for commission of offence under Sections



302/34 of the I.P.C. and for commission of offence under Section 27 of the Arms Act, she was sentenced to undergo rigorous imprisonment for five years. Both the sentences were directed to run concurrently.

2. Short fact of the case is that on 30-04-2006 at 7:00 A.M. (morning), officer incharge of Bagen Gola Police Station, Buxar namely Sri H.K. Singh (P.W.6) recorded *fardbeyan* of Nagendra Paswan (P.W.3) aged about 14 years son of late Mulk Raj Paswan (deceased). The *fardbeyan* was recorded in the house of the informant in village Khochriaon, police station – Bagen Gola, District – Buxar. In the *fardbeyan*, the informant disclosed that on 30-04-2006 at about 2.00 in the night, his mother Meena Devi (appellant) calling the informant with his name asked to open the door. Thereafter, carrying a torch in his hand, the informant opened the door. He noticed that just behind his mother, co-villagers 1. Umesh Yadav, 2. Banarsi Yadav and 3. Lalan Yadav also entered into the house. His mother kept herself standing near the courtyard and Umesh Yadav, who was carrying pistol in his hand, gave shot of firing from pistol from the close range on his father Mulk Raj Paswan and Lalan Yadav with his pistol, which he was carrying in his hand, gave one shot of firing on his father, whereby, his father fell down. Banarsi



Yadav, thereafter by using abusive language, said that the injured had died and all the accused persons fled away from the main door of the house. The informant thereafter raised हल्ला (*hulla*) and on his alarm, neighbours arrived there and said that they had also heard the sound of firing. In the meanwhile, co-villagers told that his father had already died. The reason for the occurrence was given by the informant that his mother Meena Devi (appellant) was in illicit relation with villager Umesh Yadav, regarding which relation, his father and other locals were opposing. However, his mother on some pretext for last one or two months was residing outside of the house. The informant further stated that due to said reason, his father and mother were not in talking term. The informant claimed that his mother with the help of co-villagers Umesh Yadav, Banarsi Yadav and Lalan Yadav conniving with each other had killed his father. He, in presence of his uncle Kishori Yadav (P.W.4) after reading the *fardbeyan* and understanding the same, put his signature on the *fardbeyan*. On the *fardbeyan*, L.T.I. of Kishori Paswan (P.W.4) was also obtained. On the basis of *fardbeyan* of Nagendra Paswan, a formal F.I.R., vide Bagen Gola P.S. Case No. 9 of 2006, was registered on 30-04-2006 at 11:40 AM for offence



under Sections 302/34 of the I.P.C. and Section 27 of the Arms Act against:

- (1) Umesh Yadav,
- (2) Banarshi Yadav,
- (3) Lalan Yadav, and
- (4) Meena Devi w/o deceased Mulk Raj Paswan (appellant).

3. The appellant was apprehended on the same date i.e. on 30-04-2006 and on the next date i.e. on 01-05-2006, she was produced before the learned Magistrate. After registering F.I.R., police investigated the case and thereafter, on 24-07-2006 chargesheet was submitted against the sole appellant keeping investigation pending against other three F.I.R. named accused persons. After submission of chargesheet, on 07-08-2006, learned Chief Judicial Magistrate, Buxar took cognizance of the offence and thereafter, on 31-08-2006, the case was committed to the court of sessions and it was numbered as Sessions Trial No. 429 of 2006. Before the Sessions court, on 19-10-2006, charge was framed against the appellant for commission of offence under Sections 302/34 of the I.P.C. and Section 27 of the Arms Act. It is pertinent to notice that in the chargesheet, altogether 21 persons were cited as witness to prove the prosecution case, however; during trial, to establish its case on



behalf of the prosecution, only six witnesses were examined. Out of six witnesses, Dr. Anil Kumar Singh, who had conducted *post-mortem* examination on the dead body of the deceased, was examined as P.W.1, whereas, the investigating officer Sri Harendra Kumar Singh was examined as P.W.6. Remaining four witnesses are none else but related with each other. Meaning thereby that during trial, except doctor and investigating officer, none of the independent witness had come forward to support the prosecution case.

4. After closure of the prosecution evidence, on 07-02-2007 statement of appellant under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') was got recorded, in which, she completely denied the prosecution evidence and said that at the time of alleged occurrence, she had gone to attend a Tilak ceremony in the same village and she further claimed that she was falsely implicated by elder brother of her husband, who was P.W.4, with a view to grab her land measuring about two *bighas*. From defence side also, one witness namely Jendu Yadav was examined as D.W.1, who too deposed, as if, the appellant was falsely implicated, as per instance of elder brother of the deceased/husband of the appellant.



5. Sri Neel Kamal, learned counsel for the appellant, after placing entire evidence, has argued that it was a case of completely false implication of the appellant with a view to debar the appellant to claim any right in the property of her husband. He submits that ofcourse, as claimed, the occurrence was seen by P.W.4 i.e. Kishori Paswan (own brother of the deceased), in a calculated manner, instead of coming forward as informant, he introduced minor son of the deceased and appellant as informant. He submits that it appears that all the words in the *fardbeyan* was of the P.W.4, however, on the *fardbeyan*, signature of informant was obtained. Learned counsel for the appellant further submits that it is a peculiar case, in which, prosecution though had claimed that father of the informant was done to death by two shot of firing made by the pistol, which hit on one eye and chest and both the bullets passed through the body, the investigating officer did not bother to find out fired cartridges at the place of occurrence nor the investigating officer had bothered to mention as to whether at the place of occurrence, he noticed any blood mark or not. He submits that in the case, alleged occurrence had taken place at 2.00 in the night and on the same date at 7.00 in the morning, *fardbeyan* was recorded and the investigating officer inspected



the place of occurrence, but he did not notice any such material showing such gruesome murder at the place of occurrence. Even in the inquest report, nothing has been indicated as to whether at the place of occurrence, the investigating officer had noticed any blood mark or any other material, save and except mentioning that he (I.O.) found dead-body having two fire-arm injuries. Learned counsel for the appellant has argued that the prosecution in the chargesheet had cited 21 witnesses, but no explanation has been given as to why most of the witnesses were withheld by the prosecution and only those witnesses were examined, who were none else but relative of the deceased. According to learned counsel for the appellant, it is evident that this appellant was fixed at the instance of elder brother of her husband, who is P.W.4, only with a view to prevent the appellant to claim any right over the property of her husband or ancestor property of her husband. On aforesaid ground, he has prayed for setting aside the impugned judgment of conviction and sentence.

6. Sri Satya Narayan Prasad, learned Addl. Public Prosecutor has emphasized that the prosecution case may not be seen with any doubt, since in the present case, the informant is none else, but own son of the appellant. According to learned Addl. Public Prosecutor, it is difficult to draw an inference that a



son will falsely implicate his own mother. According to learned Addl. Public Prosecutor, even on the evidence of informant alone, the learned Trial Judge was justified to pass judgment of conviction and sentence. He further submits that the informant in the case was the eye-witness and his evidence has been corroborated in the evidence of P.W.2, 4 and 5 and as such, he submits that present appeal against acquittal is fit to be rejected.

7. Besides hearing learned counsel for the parties, we have minutely examined the evidence on record. At the very outset, it would be necessary to discuss the conduct of the investigating officer of the present case.

8. On examination of the evidence of investigating officer i.e. P.W.6, it is evident that the approach of the investigating officer was completely casual. Even in his evidence, he has not bothered to explain as to whether he had properly inspected the place of occurrence or not. Nothing was whispered by him regarding the place of occurrence. Simply he had stated that on rumour he got an information at 6:30 A.M. regarding the occurrence and thereafter, he alongwith other police party rushed to the place of occurrence and recorded *fardbeyan* of the informant and started investigation. In such a case, where dead-body with fire-arm injury was found at the



place of occurrence itself, it was mandatorily required on the part of the investigating officer to minutely mention about all the facts noticed at the place of occurrence, however; during evidence, nothing was indicated by the investigating officer in respect of any material found near the dead body. He has not bothered to collect blood mark or blood from the place of occurrence. It was case of the prosecution that the deceased was done to death in the courtyard while he was sleeping. The investigating officer had not bothered to locate the fired cartridges, whereas, during *post-mortem* examination on the dead body, it was noticed that there were two entry and two exit injury. Meaning thereby that after gun shot injury, both the bullets had come out from the body of deceased. Accordingly, there was every possibility to locate the fired cartridges at the place of occurrence, however; nothing was indicated by the investigating officer.

9. On examination of evidence of P.W.4, one fact has been noticed by this Court that P.W.4 i.e. Kishori Paswan stated as if after the occurrence, he had seen that this appellant with other accused persons had fled away, but he states that within an hour the appellant returned back. In normal course, was the appellant involved in the murder of her husband and after



murder she had fled away, there was not reason for her to again return back to the place of occurrence itself with a view to give full chance to the police to apprehend her. It is a fact that appellant was apprehended by the police on the same date i.e. 30th April, 2006 and she was produced before the Court on 01-05-2006. Other aspect, which creates doubt on the prosecution case, is that in the initial version of the informant i.e. in *fardbeyan*, it was disclosed that this appellant with three accused persons had entered the house of the deceased and thereafter, occurrence had taken place, but during evidence, prosecution is completely silent regarding the presence of one of those accused namely Lalan Yadav. In the F.I.R., it was stated that second shot of firing was made by Lalan Yadav, but during trial, none of the witnesses have whispered anything about Lalan Yadav and a case was made out, as if, this appellant with other two accused persons had entered the house of the deceased and two companion of this appellant had given gun shot injury on sleeping father of the informant. Ofcourse, there is some force in the submission of learned Addl. Public Prosecutor that the informant, being son of the appellant, was not supposed to make false statement, but fact remains that the informant was minor at the time of recording *fardbeyan* and the fact that the informant



might have been influenced by the P.W.4 may also not be ruled out, particularly; in a situation where there were serious doubts in respect of character of the appellant, who was mother of the informant. In such cases, there is possibility that due to hatred with the mother, the informant (son) could have stated against her.

10. After the closure of the prosecution evidence, while recording statement of the appellant under Section 313 of the Cr.P.C., the appellant had categorically stated that she had not entered the house of the deceased alongwith other accused at the time of occurrence, rather she had gone in a Tilak ceremony in the village. Regarding the Tilak ceremony, other witnesses had also accepted that on the date of occurrence, there was Tilak ceremony in the village. The appellant had further taken the plea that she was falsely implicated by P.W.4 with a view to grab land measuring about two *bighas*. During trial, in this case, case diary from paragraph 1 to 70 was got exhibited. In normal course, there was no need for exhibiting the case diary. Fact remains that the appellant was taken into custody immediately after the occurrence on the same date i.e. 30-04-2006 and since then, she is languishing in jail.



11. After examination of entire evidence, we are of the considered opinion that prosecution has not been able to establish its case beyond all reasonable doubt and as such, benefit of doubt is required to be extended to the appellant.

12. Accordingly, by way of extending benefit of doubt to the appellant, the judgment of conviction and sentence dated 31-03-2007 and 04-04-2007 respectively passed by Sri Satish Chandra Sinha, learned Additional District & Sessions Judge, Fast Track Court - I, Buxar in Sessions Trial No. 429 of 2006 (arising out of Bagen Gola P.S. Case No. 9 of 2006) is hereby set aside.

13. Since the judgment of conviction and sentence has been set aside and appellant is in custody, it is directed to release her forthwith, if not required in any other case.

14. The appeal is allowed.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	23.06.2018
Transmission Date	23.06.2018

