

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.362 of 2015**

Arising Out of PS.Case No. -15 Year- 2012 Thana -FALKA District- KATIHAR

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Meena Devi, wife of Late Satish Sharma, resident of village - Dumar, P.S. - Falka,
District - Katihar.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Mukesh Kumar Jha-Advocate
Mr. Bhola Prasad-Advocate

For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 11-05-2018

Appellant Meena Devi has been found guilty for an offence punishable under Section 304 Part-I of the I.P.C. and has been sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.2,000/- and in default thereof, to undergo S.I. for six months, additionally vide judgment of conviction dated 11.06.2015 and order of sentence dated 15.06.2015 passed by the Additional Sessions Judge-4th, Katihar in Sessions Trial No.494 of 2012.

2. Butan Das @ Budhan Harijan (PW-1) gave his fard-bayan on 20.01.2012 near Dumar Canal at about 3.45 p.m. disclosing therein that his sister Sunita Devi @ Kanti Devi (deceased) remarried



with Satish Sharma. Out of said wedlock, his sister had begotten three sons and two daughters namely Ajay Kumar Das, Vijay Kumar Das, Katal Das @ Tatka, Babita Kumari, Neelam Kumari. The name of first wife of his brother-in-law (Satish Sharma) is Meena Devi. His brother-in-law as well as his first wife Meena Devi frequently used to manhandled her. Today, i.e. on 20.01.2012, when he reached at the place of his sister at about 2.30 p.m., he had seen few people assembled there. His brother-in-law as well as Meena Devi both were engaged in assaulting his sister with firewood. His sister was lying over the ground. He tried to intervene, whereupon was chased away by both of them. Then thereafter, with the help of villagers, he protested. After departure of both the accused, when he had gone inside the house, he saw his sister dead. At that very time, she was pregnant. Children of his sister were weeping.

3. After registration of Falka (Pothia) P. S. Case No.15 of 2012, investigation commenced and after concluding the same, chargesheet was submitted, whereupon trial commenced and concluded in a manner, subject matter of instant appeal. (From the L. C. Record, it is evident that Satish Sharma is dead).

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the



Cr.P.C. is that of complete denial. However, neither oral nor documentary evidence has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether nine PWs, who are PW-1, Butan Das @ Budhan, PW-2, Prem Lal Das, PW-3, Vijay Kumar, PW-4, Masina Khatoon, PW-5, Bodhni Khatoon, PW-6, Kausalya Devi, PW-7, Ajay Kumar Das, PW-8, Dr. Amar Kumar Deo and PW-9, Pradip Kumar Rai. Side by side, had also exhibited as Exhibit-1, signature of informant over fard-bayan, Exhibit-2, inquest report, Exhibit-3, post mortem report. Nothing has been adduced on behalf of accused in defence.

6. While assailing the judgment of conviction and sentence, it has been submitted on behalf of learned counsel for the appellant that the inconsistency in the prosecution case has completely been overlooked by the learned lower Court while recording the finding of guilt as well as inflicting sentence and that being so, the judgment impugned, is fit to be set aside. In order to substantiate the same, it has been submitted that during course of trial the witnesses had materially developed their evidence in order to justify their presence even then, the inconsistency visualizing from their evidences suggest that they were not at all an eye witness to occurrence and so, their testimony would have been rejected by the learned lower Court



outrightly as unreliable. Furthermore, it has also been submitted that P.O. has not been properly substantiated. In likewise manner, it has further been submitted that witnesses have admitted that the deceased was engaged in preparation of spurious wine and on account thereof, she was free to all and in the aforesaid background, due to rivalry amongst the goons, she faced the ultimate consequence, but being on strained relationship, ultimately appellant including her husband (since deceased), have been victimized by way of false implication. So, submitted that the appeal is fit to be allowed.

7. Contra, it has been submitted on behalf of learned Additional Public Prosecutor that the learned lower Court after scrutinizing the evidences available on the record, cautiously, minutely found the witnesses to be creditworthy corroborated by the post mortem report and that being so, rightly convicted the appellant. Furthermore, it has also been submitted that the learned lower Court had itself taken a lenient view while inflicting the sentence against the appellant.

8. Coming to the status of the witnesses, it is apparent that PW-1 and PW-2 are brothers of the deceased. PW-3 is the son of the deceased. PW-4, PW-5, PW-6 have been declared hostile. PW-7 is the another son of the deceased begotten from the first husband. PW-8



is the doctor and PW-9 is the formal witness on account of non-examination of the I.O.

9. So, the first question which now being posed is whether on account of non-examination of the I.O. interest of the accused is found jeopardized. Times without number, it has been held that mere non-examination of I.O. would not dent in the case of the prosecution nor it could be found prejudicial to the interest of the accused. The accused has to show that on account of non-examination of the I.O. his right has been infringed. The Hon'ble Apex Court had observed that no straight jacket formula could be formal rather it varies to the fact of case to case. In ***Lahu Kamlakar Patil and another vs. State of Maharashtra reported in (2013)6 SCC 417***, it has been held:-

“18. Keeping in view the aforesaid position of law, the testimony of PW 1 has to be appreciated. He has admitted his signature in the F.I.R. but has given the excuse that it was taken on a blank paper. The same could have been clarified by the Investigating Officer, but for some reason, the Investigating Officer has not been examined by the prosecution. It is an accepted principle that non-examination of the Investigating Officer is not fatal to the prosecution case. In Behari Prasad v. State of Bihar[(2010) 6 SCC 1], this Court has stated that non-examination of the Investigating



Officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In Bahadur Naik v. State of Bihar[(1996) 2 SCC 317], it has been opined that when no material contradictions have been brought out, then non-examination of the Investigating Officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial judge nor the High Court has delved into the issue of non-examination of the Investigating Officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in Arvind Singh v. State of Bihar[(2000) 9 SCC 153], Rattanlal v. State of Jammu and Kashmir[(2001)6 SCC 407] and Ravishwar Manjhi and others v. State of Jharkhand[(2007) 13 SCC 18], has explained certain circumstances where the examination of Investigating Officer becomes vital. We are disposed to think that the present case is one where the Investigating Officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.

So, the impact of non-examination of the I.O. would be



considered after scrutinizing the evidence of the witnesses.

10. PW-8 had conducted post mortem over the dead body of deceased **Sunita Devi @ Kranti Devi** on 21.02.2012 and found the following:-

i) External examination Appearances bruising and blackish discoloration of skin on upper and lower eyelid. Blood clots present in both nostril. Bruise black in colour over right lower jaw (approximately 4" x ½").

On dissection of head and neck:- Head subcutaneous blood clots present under the skin of forehead. Haematoma present in brain matter within normal limit.

Thorax:-both lungs intact and congested, heart intact and chamber empty. Abdomen-both liver and spleen intact and congested. Stomach-contains semi-digested food articles. Both kidney intact and congested. Uterus-contained dead foetus approx 32 to 36 weeks size. Other abdominal fissures within normal limit. Bladder empty and genitalia NAD.

In the opinion of the doctor, the cause of death happens to be on account of ante-mortem injuries found over head and face caused by hard and blunt object leading to severe neurogenic and haemorrhagic shock. Furthermore, doctor had also found foetus



(dead) of 32-36 weeks. Furthermore, it has also been explained by the doctor that during course of ascribing the post mortem report, he had put 20.01.2012 in place of 21.01.2012 mistakably. During course of cross-examination, his attention has been drawn mainly towards the conflicting date and further, shown the time elapse since death, in between 12-24 hours. Then had said that those ante-mortem injuries could not be caused on fall.

11. PW-7 is the son of deceased from her first husband. He had deposed that deceased Sunita Devi @ Kanti Devi was his mother. On 20.01.2012 at about 2.30 p.m., he was at Dumar Chowk where he heard regarding assault over his mother by Satish Sharma and Meena Devi. After hearing the same, he came at the house of Satish, which is near the canal and had seen Satish and Meena engaged in assaulting his mother with firewood. When he intervened, some blow was also given to him. His mother, on account of assault, became injured and then, died. Both the accused fled away. Injury was caused over mouth as well as other parts of body of his mother. Bhutan and Prem along with others have witnessed the occurrence. Then had stated that his mother had remarried with Satish Sharma and was residing with him. He happens to be son from first husband of his mother. His mother also begotten son from Satish Sharma and at the time of occurrence, she was pregnant. Police had come to place of



occurrence where his statement was also recorded. Dead body of his mother was taken away by the police for post mortem, identified the accused. During cross-examination, he had stated that Dumar Chowk lies at the distance of 5-7 kilometers from his house. Canal lies at a distance of half kilometer from Dumar Chowk intervened by Dumar village. The house of Satish Sharma lies less than one kilometer from Dumar Chowk. One daughter of Satish Sharma had already been married. In Para-4, he had stated that his father is alive. His father and his mother were carrying their relationship. His mother was residing near canal for the last ten years. That house happens to be over government land. Then had admitted that his mother was engaged in preparing spurious wine. Houses of so many persons were around the house of his mother. In Para-5, he had stated that he is unable to disclose the year in which, his mother married with Satish Sharma. He is unable to disclose the name of person, who had informed regarding assault over his mother by Satish. So many persons were present at the P.O., but he is unable to disclose names of those persons. He is unable to divulge how many blows were given to her mother. Then had stated that police had come, taken away the dead body. He had also gone to Pothia Police Station and then, returned back. He had further stated that Shradh was performed by him and expenses were bore by his father. Then, there happens to be contradiction relating to



divulging himself to be assaulted by the accused persons, when he tried to rescue his mother. Occurrence was seen by him as well as maternal uncle Bhutan and Prem. Then, was suggested that no such kind of occurrence had taken place. He had deposed falsely. Satish Sharma had not married with the deceased. Deceased died during course of selling of the wine.

12. PW-3 is a minor. He happens to be son of deceased with Satish Sharma, one of the accused. That means to say, he has come forward to depose against his father as well as his step-mother. His age was estimated as 07 years and in the aforesaid background, he was tested by the learned lower Court and then, his evidence was recorded. During course of evidence, he had stated that on the alleged date and time of occurrence, he was along with his mother, whose name happens to be Sunita Devi @ Kanti Devi. His father Satish Sharma and step-mother Meena Devi began to assault his mother with firewood (Chaila) and on account thereof, she died. At that very moment, his maternal uncle, police came, identified both the accused. During cross-examination, he had stated that Budhni Khatoon and Mazina Khatoon had also arrived at the time of occurrence. His Mama has brought him to depose. Then had denied the suggestion that he has been tutored by his Mama. Then had said that in his presence, his father and Meena Devi had murdered his mother. Then had denied the



suggestion that his mother died of illness.

13. PW-2 is the brother of the deceased, who had deposed that deceased was firstly married with Brahmedeo Ravi Das. From that marriage, begotten two daughters and a son and then thereafter, she married with Satish Sharma, who was already married since before with Meena Devi. After marriage with Satish Sharma, his sister begotten two sons from Satish Sharma. On 20.01.2012 at about 2.30 p.m. while he was at Dumar Pethia, a rumour floated regarding assault over his sister by Satish and Meena. He immediately rushed and had seen both of them assaulting his sister with firewood as a result of which, blood was oozing from her head injury. His brother was also present. Neelam Kumari, Ajay, Vijay and others were also present. Police came, recorded statement of witnesses including himself, dead body was taken away for post mortem, identified the accused. Then had disclosed that the sons of the deceased are along with them. During cross-examination at Para-5, he had stated that his sister had not taken divorce from her first husband. His sister had fallen in love with Satish Sharma, whereupon Satish Sharma took her to Punjab. They have not instituted any case against him. He had further stated that he is engaged in purchase-sell of goat. He had further stated that while he was at Dumar Pethia, he heard rumour that his sister has been murdered, whereupon he reached at the P.O. When



he reached, he found his sister dead lying over the ground and was in pool of blood. Police arrived soon thereafter. In Para-8, he had further stated that Satish was engaged in sale of wine and in the aforesaid background, there was frequent occurrence of commotion at that very place. He had denied the suggestion that in the aforesaid background, his sister has been murdered.

14. PW-1 is the informant. During his examination-in-chief, he had stated that deceased Sunita Devi @ Kanti Devi was his sister, whose marriage was solemnized at village-Kuhara. Subsequently, got herself married with Satish Sharma and was residing with him. His sister begotten five children from both the husbands. On 20.01.2012 at about 2.30 p.m., he had gone to place of his sister along with his brother. As soon as they reached, they saw first wife of Satish Sharma was assaulting his sister with firewood as a result of which, she fell down. When they intervened, they were also threatened. During midst thereof, villagers came seeing whom, Satish and his wife escaped there from. His sister died. Children of his sister were weeping. Police was informed and then, his fard-bayan was recorded (exhibited), dead body was taken away by the police for post mortem. Then had said that Satish and his first wife were demanding Rs.50,000/- for running of the wine business. Identified the accused. Then at Para-6, had stated that Brahmdeo Das was the first husband of



his sister with whom, she was married 16-17 years ago. His sister had begotten two daughters and a son. Satish Sharma indulged in love marriage and then, took her to Punjab and for that, they have not instituted any case against them. Then had said that no document is available to suggest that his sister was married with Satish Sharma. Then had denied the suggestion that his sister was engaged in sale of wine, having free access of different persons. Then had stated that he was frequently visiting her place before the occurrence. At Para-9, he had stated that when he reached at the place of sister, on the alleged date and time of occurrence, large number of persons were present, but he is unable to disclose their names, he had seen sister lying. Then had stated that he had gone to Darogaji at about 3.45 p.m. Then his attention has been drawn up towards his statement that he had stated before the police. Then at Para-13, he had denied the suggestion that in the background of access of so many persons to her, there was marpit and in the foresaid background, she was assaulted. He also denied the suggestion that she was not at all married with Satish Sharma.

15. From the evidence available on the record, it is evident that death of deceased by means of ante-mortem injuries caused by hard and blunt substance is found duly substantiated, in likewise manner, the stage of pregnancy. From the evidence of the



witnesses as discussed hereinabove, it is apparent that none were cross-examined on the factum of occurrence and in likewise manner, over the place of occurrence and so, the contradictions which as is evident, being minor one having no adverse impact upon the status of the witnesses, need not cast any sort of deficiency on account of non-examination of the I.O.

16. While scrutinizing the evidence of the PWs, as stated above, though witnesses have not been cross-examined over manner of occurrence, place of occurrence, but presence of PW-2 is found subsequently introduced as he had stated that he was present at Dumar Pethia while PW-1 had stated that he came from his house directly to the place of his sister. That being so, there was no occasion for PW-1 as well as PW-2 to come at the place of deceased, jointly, may be after commission of the occurrence, but not from their house. Be that as it may, the evidence of minor, PW-3 a small kid, who had seen such horrifying situation whereunder murder of his mother was caused by way of assaulting with firewood and even happens to be very emphatic during course of cross-examination wherein he had stated that in his presence his mother was assaulted by his father and Meena Devi leaves no doubt with regard to proper identification of appellant along with her husband Satish Sharma (since deceased) to be author of the injury leading to her death and that being so, she



rightly been convicted.

17. In *Yogesh Singh v. Mahabeer Singh and others reported in 2017 CRI.L.J. 291*, it has been held by the Apex Court:-

Testimony of Child Witnesses

“22. It is well-settled that the evidence of a child witness must find adequate corroboration, before it is relied upon as the rule of corroboration is of practical wisdom than of law. (See Prakash v. State of M.P., (1992) 4 SCC 225: (AIR 1993 SC 65); Baby Kandayanathi v. State of Kerala, 1993 Supp (3) SCC 667: (AIR 1993 SC 2275; Raja Ram Yadav v. State of Bihar, (1996) 9 SCC 287: (AIR 1996 SC 1613); Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341; State of U.P. v. Ashok Dixit & Anr., (2000) 3 SCC 70: (AIR 2000 SC 1066); Suryanarayana v. State of Karnataka, (2001) 9 SCC 129: (AIR 2001 SC 482).

23. However, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is a found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring. [Vide Panchhi v. State of U.P., (1998) 7 SCC 177: (AIR 1998 SC 2726)].”

18. That being so, finding recorded by the learned lower Court is being concurred. However, considering the status of the appellant being a lady having a grievance on account of Sautan



being brought by her husband and further, the rigour trial having been faced at her end, sentenced having inflicted by the learned lower Court for R.I. of five years is being reduced as R.I. for three years. On the other hand, the fine inflicted by the learned lower Court of Rs.2,000/-, is enhanced to Rs.1,00,000/- (one lac) and in case, the same is deposited, 90 per cent thereof, shall be disbursed amongst the children of the deceased Sunita Devi by the learned lower Court on proper identification, failing which appellant will suffer imprisonment of two years, additionally.

19. With such modification in sentence, instant appeal is dismissed. Appellant is on bail, hence her bail bond is cancelled directing her to surrender before the lower Court within fortnight to serve out the remaining part of sentence failing which, the learned lower Court will proceed against her in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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