

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.730 of 2012**

Arising Out of PS. Case No.-239 Year-2009 Thana- BIDUPUR District- Vaishali

Debashish Banerjee S/O Late Debnath Banerjee Resident Of C/O Mahesh Singh, House No.- 212/A, Line No.- 07, Post Office- Agrico, East Singhbhum Bhalobasha, Jamshedpur, Jharkhand

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

For the Appellant/s : Mr. Sheikh Arkan Ahmad, Adv & Mr. Sanjay Kumar Singh, Adv

For the Respondent/s : Mr. Ashwini Kumar Sinha, APP

**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN**

**and**

**HONOURABLE MR. JUSTICE S. KUMAR**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE S. KUMAR)**

**Date : 05-07-2018**

Heard parties.

2. This criminal appeal is directed against the judgment and order of conviction dated 24.05.2012 and sentence dated 25.05.2012, under Sections 377, 302 and 201 of the IPC passed by the Additional Sessions Judge, F.T.C-II, Vaishali at Hajipur in Sessions Trial No. 319 of 2010 arising out of Bidupur P.S. Case No. 239 of 2009.

3. The prosecution case is based upon FIR lodged by Laxman Mishra father of the deceased child in which it has been stated that on 19.07.2009 at about 2:15 pm, he received



information on mobile from school staff that his son is unwell and has been sent to Sadar Hospital, Hajipur, for treatment and on receiving such information, he went to Sadar Hospital, Hajipur, where he found that his son was lying dead. After seeing the dead body of his son, he found his neck slit and wrist veins cut and there were other injuries also on the forehead, chest and cheek of his son. The deceased child was admitted in Oasis Residential Public School in Class-1 and was residing in the hostel of the said School. His admission in the said School was done at the assurance of Pramod Kumar Pandey, Store Keeper of the school and Nitin Kumar Director of the school that they will take proper care of his son. On 04.07.2009, his son was admitted into the school and started residing in the hostel under Superintendent Pankaj Kumar and Principal and they assured security and safety of his child. From the hospital staff he came to know that the dead body of his son was brought in white colour Maruti Van and after leaving the dead body in the corridor of the hospital all of them fled away from the hospital. He tried to contact school authority/accused persons on phone but their mobiles were switched off. On the basis of written complaint FIR was registered by the Officer-in-Charge Bidupur P.S. Case No. 239 of 2009 registered for the offence punishable under Sections 302, 120B



and 34 of the IPC. Police investigated the matter and after investigation submitted chargesheet against the appellant under Sections 302, 377, 201, 120B and 34 of the IPC and thereafter case was committed to the court of Sessions and charges were framed under Sections 302, 377, 201, 120B and 34 of the IPC, appellant denied the charge framed against him and claimed to be tried.

4. Ten (10) oral witnesses and twenty three **(23)** documentary evidence have been produced on behalf of prosecution. The defence has also examined four defence witnesses to deny charges.

5. PW-1 Ashok Kumar Singh, in his deposition has stated that he is Hindi Teacher in Oasis Residential Public School and in his presence three seizure lists were prepared and he put his signature over the seizure lists, which has been marked as **Exhibit-1** and **Exhibit-1/1**. He has further stated that on 19.07.2009 the Music teacher of school Debashish Banerjee (appellant) was in half pant and T-shirt and in said dress he took the music class. On 10.08.2009 the Investigating Officer seized, half pant, T-shirt, Handkerchief and Plastic Bucket on which blood stains were found. His statement was also recorded under Section 164 of the Cr.P.C upon which he has put his signature which has been marked as **Exhibit 1/2**. He recognized Debashish Banerjee (Appellant) in



the Court. He has further stated that on Sunday usually teachers wear half pant and T-shirt. In the room of Debashish Banerjee (appellant) two more teachers namely Ashutosh Aaryan and Vinod Shankar Tiwary also lived.

6. PW-2 is Dr. Rajendra Prasad Khetan, who in his deposition has stated that on 20.07.2009, he was posted as Pathologist at Sadar Hospital, Hajipur and received specimen of deceased Shubham and on examination of the material under microscope, he found spermatozoa in the fluid with some faecal matter and report was prepared by him which has been marked as **Exhibit-2**.

7. PW-3 is Dr. Ranjan Kumar Sinha, who in his deposition has stated that on 20.07.2009, he was posted as Medical Officer in the hospital and received the dead body of deceased Shubham and performed the post mortem over the dead body and found nine injuries on his body which were incised wound and specifically injury no. 8 is incised wound of 7"x2"x1½" over the neck and cutting Larynx, causing death of the deceased. He has opined that such sharp cutting injury can be made by knife or chhura. In his medical report he has further stated that perianal area contained turbid whitish fluid with some faecal matter. The report received confirmed presence of spermatozoa and injuries



sustained were sufficient to cause the death in ordinary course of nature. He has stated that post mortem report was prepared by him which has been marked as **Exhibit-3**.

8. PW-4 Satish Kumar Singh, in his deposition stated that he used to collect the school fees and resided in the same room of the school in the night, where Pankaj, Debashish Banerjee and Anchal Pandey also resided with him. On 19.07.2009, on alarm raised by the children, Pankaj, Debashish Banerjee (appellant) and Anchal Pandey and one more person came down from stairs after hearing children shouting that blood is oozing out from the body of Shubham (deceased) and all the four including the appellant, carried injured-Shubham in Maruti Van to the hospital. Police reached in the same evening at the place of occurrence along with him and from outside the school campus, a knife was recovered and seized by police and seizure list was prepared which has been marked as **Exhibit-1/3**.

In his cross-examination, he stated that he has no information regarding the occurrence. Investigating Officer has seized the knife on 20.07.2009 and he is witness of seizure list. He did not see the Investigating Officer picking the knife. He along with six persons used to reside in a single room. The Police officer had asked them to live together and they lived together till



20.08.2009. Vigil was kept upon them by the police. He heard about the blood oozing out from the body of deceased on 19.07.2009 at about 9:00 am and children by shouting called Pankaj and Debashish Banerjee (appellant) on the ground floor stating that the deceased was injured and blood was oozing out from his body. He had stated before the Investigating Officer that along with him Pankaj and Debashish Banerjee (appellant) were in the room.

9. PW-5 is Ashutosh Aaryan, who in his deposition stated that he is Yoga teacher in the aforesaid school and used to reside in the school. The room in which he used to live, Debashish Banerjee (appellant) also lived. On 19.07.2009 at about 9:45 am, he was having his breakfast and saw Debashish Banerjee (appellant) in half T-shirt and half pant. In the said dress, he took music class in the music room. On 10.08.2009 from the room of Debashish Banerjee (appellant), half pant, half T-shirt and handkerchief were recovered by the police from a green colour bucket, which was worn by the appellant on 19.07.2009. He has further stated in his deposition that Vishwanath Jha and Debashish Banerjee (appellant) used to live in the same room. On the date of occurrence, he did not take any class in the morning because it was Sunday and students used to have self study. On the date of



incident, one child cried loudly that blood is oozing out from the body of another child and at that time I was in music room. Debashish Banerjee (appellant) was also present in the music room and was playing Harmonium. Children were playing Antakshari. On hearing alarm Debashish Banerjee (appellant) went there. I went up till the verandah. By that time the deceased child was crying and all of them took the injured child to the hospital and from 19.07.2009 till 20.08.2009 they remained in the same room under the vigil of police. He resided on the first floor. He does not have any information regarding the incident.

10. PW-6 is Laxman Kumar Thakur, who in his deposition stated that on 19.07.2009, he was working as Office Assistant cum Accounts Clerk in the aforesaid School and on 10.08.2009 from the room of Debashish Banerjee (appellant), one T-shirt, one bucket, one half pant and one handkerchief was seized by the police, which had blood stains. On the bottom of bucket there was blood stain. Seized articles were taken away by the officers of Forensic Science Laboratory and seizure list was also prepared upon which he put his signature, which has been marked as **Exhibit-6** and **Exhibit-6/1**. His statement was also recorded under Section 164 of the Cr.P.C, which has been marked as **Exhibit-6/2**.



In his cross-examination, he has stated that Debashish Banerjee (appellant) was music teacher in the school and deceased Shubham was killed on 19.07.2009 in the school premises. He is not aware as to who killed the child. The room of Debashish Banerjee (appellant) was on second floor and three teachers used to live with him in the same room. He was present in the room at the time of seizure of articles. He denied that the articles recovered by the police was seized in his presence. Since he is concerned with the Admission in the school, as such he knows father of the petitioner.

11. PW-7 is Dr. Anil Kumar Sinha, who in his deposition stated that he is forensic expert and has proved the Forensic Science Laboratory Report sent to the court which has been marked as **Exhibit-7**. Signature of the Technical Officer has been marked as **Exhibit-7/1**.

12. PW-8 is Rita Sashmal, who in her deposition stated that she submitted her joining in the school on 20.04.2009 and on 19.07.2009 she saw appellant, who is music teacher in his half pant and T-shirt. At that time deceased Shubham was student of Class-1. On that day classes were held till 12 O' Clock. On that day Pramod Kumar Pandey send a message through Sonu (staff) that Maternal Uncle of Shubham has come outside and send



Shubham outside after giving him Bournvita. Soon thereafter at about 1:00 pm, she heard that one student was lying injured and he was Shubham (deceased). He was taken to the hospital. Prior to it Pramod Pandey had come to the hostel to call Shubham. She has further stated that she had seen Debashish Banerjee (appellant) at 9:30 am in the school in half pant and T-shirt. Her statement was also recorded under Section 164 of the Cr.P.C, which has been marked as **Exhibit-8**.

In her cross-examination, she stated that she is not aware who killed Shubham (deceased). On hearing that one student is lying injured then Pankaj, Aaryan and Debashish Banerjee (appellant) carried out the injured student to the hospital. She has made specific statement that deceased Shubham was with her till 12 O' Clock. Pramod Pandey is store keeper of the school.

13. PW-9 is Laxman Mishra father of the deceased, who in his deposition stated that a call came on the mobile of his wife from the aforesaid school that his son who is a student of Class-1 is unwell and thereafter he went to Sadar Hospital along with his second wife and brother Amit Mishra and found his son lying dead outside the hospital. His dead body was covered by a towel and after removing the towel he found the neck of his son slit and wrist vein cut. There were other injuries on the body of his son also. His



son was seven years old and used to reside in the hostel of the school. He got admitted his son in the school on the assurance of Pramod Kr Pandey, a staff and Nitin Kumar, Director of the aforesaid school that they will take proper care of his child and he will be in safe and secure atmosphere. When he came to hospital no one from the school was present and only driver of the Maruti Van was there who told that all staff of the school after keeping the dead body of his child left the hospital. He has further stated that he came to know that Debashish Banerjee (appellant) had killed his son. Nitin Kumar, Pankaj Kumar, Pramod Pandey, Lalan Kumar Choudhary and others were also involved in the murder of his son. He has proved his signature, his brother signature and his brother-in-law signature on fardbeyan, which has been marked as **Exhibit-9, Exhibit-9/1 and Exhibit-9/2**. He had not seen Debashish Banerjee (appellant) before the incident. During investigation, police told that crime has been committed by Debashish Banerjee (appellant).

In his cross-examination he has stated that he has solemnized second marriage and from first marriage he has two sons and from second marriage one son Shubham, who was killed in the school and he has stated that if he would have been alive he would also have got share in the property but after his death all



property will devolve on children of first wife. The name of brother of his first wife is Rishi Jha and Pramod Pandey is his friend. Pramod Pandey advised him to get his son admitted in the aforesaid school. By his second marriage the brother of first wife Rishi Jha was very annoyed and also expressed his displeasure. However, after sometime everything became normal. He had no interaction with Debashish Banerjee (appellant) prior to the incident and he has no enmity with the appellant. He has stated in his fardbeyan that he has not named Debashish Banerjee (appellant). His injured son was carried to the hospital from school by Debashish Banerjee (appellant) and other staff of the school.

14. PW-10 Umesh Chandra Tiwari is the Investigating Officer of the case. He in his deposition stated that on 20.07.2009, he was posted as Officer-in-charge of the Police Station and on the same date he received fardbeyan of informant Laxman Mishra. Fardbeyan was written by Daya Shankar Prasad, S.I., Hajipur P.S. and he has identified the signature and writing of S.I. which has been marked as **Exhibit-10**. On the basis of fardbeyan of informant Bidupur P.S. Case No. 239 of 2009 was instituted under Sections 302, 120B/34 of the Indian penal Code in his writing, endorsement has been marked as **Exhibit-11** and FIR has been marked as **Exhibit-12**.



15. After institution of FIR, he took the investigation of the case himself and obtained the inquest report prepared by the Hajipur police. He went to the aforesaid school on 20.07.2009 at about 5:00 am in the morning and recorded statement of Rita Sashmal, Laxman Thakur, Ashutosh Aaryan, Ashok Kumar Singh, Sambal Kumar Majumdar, Urmila Devi, Virendra Tiwari, Harishchandra Tamta, Satish Kumar Singh, Vikki Kumar, Aditya Ram and Rohit Raj. On the same date i.e. 20.07.2009, he also inspected the place of occurrence in presence of witnesses which is the ground floor of the said school having one bathroom with two toilets and it was stated that deceased was killed near the Eastern toilet on the ground floor. Much blood was spread over the floor of toilet and there were blood marks on the wall also and same was photographed. One slipper of the deceased was in Pan of toilet and other was lying on the floor of toilet. He collected and seized blood samples of the deceased and prepared the seizure list. He recovered old knife lying outside the school premises which also contained blood stains and same was seized and sent to FSL. On 21.07.2009, he went to the village of informant and took his restatement. He received post mortem report, pathological report and took the blood samples of Debashish Banerjee (appellant) and others and send it to FSL, Patna for its examination. On



10.08.2009 on the second floor of the aforesaid school, he seized the blood stained half pant, T-shirt and bucket near the bed of Debashish Banerjee (appellant) and sent it for forensic examination. The seizure list was prepared and has been marked as **Exhibit-13**. On 10.08.2009 from the northern verandah of the school, sample was taken by the FSL experts, which has been marked as **Exhibit-15**. On 17.08.2009, blood sample of the appellant was taken which was sent for DNA test, which has been marked as **Exhibit-16**. He has lastly submitted that on the basis of oral and documentary evidence he found the case to be true against the appellant and submitted chargesheet under Sections 377, 302 and 201 of the IPC.

In his cross-examination, he has stated that he took the charge of investigation at about 2:00 am on 20.07.2009 and reached the school at about 5:00 am in the morning on the same date and he seized the slippers of the deceased at about 9:30 am. He also seized the blood stained knife from outside the school premises. He took restatement of the informant but he did not name Debashish Banerjee (appellant). He searched the room of Debashish Banerjee (appellant) and seized the articles and prepared seizure list on 10.08.2009. He tried to arrest the Principal of the aforesaid school but he could not be arrested. He denied the



suggestion that he is in league with the Principal of the aforesaid school and has falsely implicated the appellant and much after the date of occurrence, search of the room of the appellant was made and by his connivance the appellant has been falsely implicated in this case. He has not recorded in his case diary that Debashish Banerjee (appellant) was residing in the same room along with 4 to 5 teachers. He did not investigate with respect to family dispute of informant and how many marriages informant has solemnized and whether there was family dispute between the children of first and second wife. He did not investigate the case from such angle. Pramod Kumar Pandey had played crucial role in Admission of deceased which he has recorded during his investigation. He stated that Pramod Kumar Pandey also functioned as Store-keeper of the school. The Principal of school also had solemnized two marriages and there was dispute with respect to ownership of the land. He further stated that Rishi Jha brother of first wife (deceased) of informant was witness of inquest report and was friend of Pramod Kumar Pandey for last ten years. Pramod Kumar Pandey was also Store Keeper in the school. Rita Sashmal had stated before him that step maternal uncle of deceased-Shubham had given Bournvita to Sonu(staff) to give it to Shubham (deceased). Debashish Banerjee (appellant) and others had taken Shubham to



hospital. Witness Laxman Thakur had also made such statement. Witness Ashutosh Aaryan stated that the class was over at 12 O' Clock appellant was playing Harmonium fifteen minutes before it. Witness Ashok Kumar stated that Debashish Banerjee was preparing paper and took class in half pant and T-shirt, when suddenly there was outcry and all went there and Debashish Banerjee and others pulled the deceased outside the toilet and took him to hospital. Many other witnesses have supported him. He stated that there is no eye witness of the killing.

16. The appellant has been convicted on the basis of circumstantial evidence. The prosecution in order to prove the guilt of offence under Section 302 of the IPC has to lead evidence in order to connect all links in the chain which points to the guilt of accused alone and no one else. The Apex Court in the case of ***Ramreddy Rajeshkhana Reddy and Anr.Vs. State of Andhra Pradesh*** since reported in ***2006(10) SCC 172***, has held as follows:-

"It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence."



17. After hearing the parties and perusing the materials on record, the fact which emerges is that appellant (Debashish Banerjee) was seen by PW-1 Ashok Kumar Singh, PW-5 Ashutosh Aaryan and PW-8 Rita Sashmal in the mess at 9:30 am when appellant (Debashish Banerjee) was in half pant and T-shirt. PW-1, PW-5 and PW-8 have further stated that in the same dress he took music class. On Sunday teachers generally remain in half pant and T-shirt. PW-8 has further stated that Shubham (deceased) remained with her in the class till 12 O' Clock. The Music class started prior to 12 O' Clock and was continuing when incident happened and appellant was present in Music class. She has further stated that when alarm was raised by one child that Shubham is bleeding, appellant (Debashish Banerjee) was in class with other teachers and after hearing, they rushed to the place of occurrence and carried injured-Shubham to the hospital and so called Mama of Shubham had called Shubham outside the class to give Bournvita to him. She further stated that Bournvita brought by him was given to Shubham by one staff named Sonu. There were many teachers, senior students, staff and kitchen staff present on the ground floor when incident happened. From the evidence on record, it is admitted that appellant was in his Music class along with other



teachers in half pant and T-shirt and when alarm was raised, they all went at the place of occurrence and took shubham to the hospital in the same dress, as such there was every possibility that half pant and T-shirt of appellant was stained with the blood of Shubham who was profusely bleeding. Appellant (Debashish Banerjee) was in the same dress throughout the day from the morning till he was taking the Music class and thereafter rushed to the place of occurrence along with other teachers and took injured Shubham to the Hospital, as such his participation in crime is doubtful. All witnesses have stated that they are not aware who killed Shubham. None has named appellant as assailant.

18. After pathological examination of the swab **(Exhibit-2)** taken from pre-anal part of the body of Shubham, spermatozoa was found in the microscopic examination by Doctor of the Hajipur Sadar Hospital and investigating officer send the sample/specimen **(Exhibit-14 and Exhibit-14/A)** to match said spermatozoa with other suspected accused, however, in Forensic Lab Report **(Exhibit-17)** no semen was detected. Blood was not detected in Forensic Lab Report on Exhibit-A(Knife), Exhibit A/1 (cotton swab from knife), Exhibit-D (half pant cutting) Exhibit-E (Handkerchief cutting), Exhibit-F (T shirt cutting) Exhibit-D1 (half pant) Exhibit-E1 (handkerchief) Exhibit-F1(T shirt). The size



of the seized knife was very big and it could not have been kept by the appellant (Debashish Banerjee) at the time of taking Music class.

19. The only ground on which appellant (Debashish Banerjee) has been convicted is that the blood stained half pant, T-shirt and handkerchief which were found in the bucket in the room of appellant (Debashish Banerjee). It is also an admitted fact that appellant (Debashish Banerjee) was not the sole occupant of the room and besides him two more teachers were living in the said room. The seizure was made on 10.08.2009 much after date of occurrence and stains found on the clothes were not unnatural as it has come in evidence that appellant was in said dress while taking Music class and in the same dress rushed to the place of occurrence along with other teachers and in the same dress took the deceased from school to hospital as such there was nothing unnatural that said dress contained blood stains which was seized much after date of occurrence and as such conviction on said basis is not sustainable. The Forensic Lab Report as referred above also does not support the case of prosecution.

20. The chain of circumstances in order to hold appellant guilty is not complete and there are many loop holes in the prosecution story and evidence on record does not establish



involvement of appellant in the crime beyond shadow of doubt.  
As such, his conviction under Sections 302, 377 and 201 of the  
IPC is not sustainable and is set aside.

21. The Criminal Appeal is allowed. The judgment of  
conviction dated 24.05.2012 and order of sentence dated  
25.05.2012 under Sections 377, 302 and 201 of the IPC, passed by  
the Additional Sessions Judge, F.T.C-II, Vaishali at Hajipur in  
Sessions Trial No. 319 of 2010 arising out of Bidupur P.S. Case  
No. 239 of 2009 is set aside and appellant is directed to be released  
forthwith if not wanted in any other case.

**(Dr. Ravi Ranjan, J)**

**(S. Kumar, J)**

ranjan/-

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