

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 595 of 2012

Arising Out of PS. Case No.-227 Year-2010 Thana- Nanhpur District- Sitamarhi

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Satya Narayan Rai @ Satto Rai son of late Ram Sharan Rai resident of
Village - Choti Bhadihan, P.S. Nanpur, District – Sitamarhi.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Mr. Shankar Kumar
For the Respondent/s : Mr. S.N. 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 : 25-10-2018

The present appeal was preferred by the sole appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') against judgment of conviction and sentence in Sessions Trial No. 220 of 2011. The appellant by judgment dated 25-04-2012 was convicted for commission of offence under Sections 302 & 201 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.') and by order dated 27-04-2012, under Section 302 of the I.P.C. the appellant was sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- (ten thousand). In case of default in payment of fine, he was directed to further undergo



imprisonment for one year. Under Section 201 of the I.P.C., the appellant was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5,000/- (five thousand). In case of default in payment of fine, he was directed to further undergo imprisonment for six months. The appellant was convicted and sentenced by Sri Sudhakar Singh, learned Additional Sessions Judge, Fast Track Court No. 2, Sitamarhi (hereinafter referred to as 'Trial Judge') in Sessions Trial No. 220 of 2011.

2. Short fact of the case is that on 30-12-2010 at 19.00 hrs. (7:00 PM), Sub-Inspector of Police Sri Anant Ram (P.W.6), S.H.O. Nanpur Police Station recorded *fardbeyan* of Satrudhan Rai (P.W.4) of village – Piprashi, P.S. Bajpatti, District – Sitamarhi. The *fardbeyan* was recorded at the door of Satya Narayan Rai (appellant), Chhoti Bhadihan. In the *fardbeyan*, the informant disclosed that his second sister namely Meena Devi, aged about 40 years, was married with Satya Narayan Rai @ Satto Rai (appellant) about 20 years back. Her sister was blessed with son namely Rohit Kumar, who on the date of occurrence was aged about 11 years. The informant further disclosed that in between his sister and his brother-in-law, on some domestic issue, dispute was regular feature. His sister was residing with



her husband in her in-laws house. Since last six months, the son of the informant namely Anil Kumar (not examined), aged about 10 years, was also residing with his sister (deceased). The informant was doing a private job in Delhi. About eight days back, his wife namely Bauwawati Devi (not examined) had telephonically informed him that she had received information from village Bhadihan that husband of Meena Devi i.e. Satya Narayan (appellant) had killed his wife and buried the dead body inside the house and after shutting the door and windows, the accused had fled away. After getting such information, on 30-12-2010 he came from Delhi to his house, where his wife narrated all those facts. Thereafter, the informant with his co-villagers namely 1. Shyam Bihari Rai (P.W.3), 2. Ajay Mahto (P.W.1), 3. Sanjay Kumar (P.W.2), 4. Laxman Sah (not examined) and 5. Ram Ekbal Sah (not examined) went to the house of his sister in village Bhadihan. He noticed that on the door, there was a lock. From the neighbour, he got secret information that Satya Narayan Rai (appellant), after killing Meena Devi (his wife), had buried the dead body inside the house and after shutting the door and windows, he fled away. From inside the house, bad smell was coming out. Thereafter, telephonically he informed the police and then police arrived



there. On information, the Block Development Officer, Nanpur also arrived and in his presence and in presence of villagers, the door was unlocked. Inside the house in south-west corner, dead body was recovered from a ditch. The dead body was taken out and thereafter, he (informant) identified that it was the dead body of his sister Meena Devi. The dead body, due to lapse of some days, had already come to decomposed condition. Outer skin of the body was in complete bad condition. The tongue of his sister had come out and from nose and mouth, blood had also come out. On noticing those facts, he claimed that his sister was firstly done to death by her husband and with a view to disappear the evidence, the dead body was buried in the room and door & windows were locked. The informant claimed that the appellant after killing his wife, with a view to conceal the evidence, had buried the dead body. The said *fardbeyan* was read over to him and after finding it correct, the informant put his signature as witness to the *fardbeyan*. Shyam Bihari Rai and Ajay Mahto P.W.3 and P.W.1 respectively also put their signature on the *fardbeyan*. The said *fardbeyan* was forwarded to the S.H.O., Nanpur Police Station for institution of case under Sections 302/201 of the I.P.C. and thereafter, on 30-12-2010 at 22.00 hrs. (10:00 PM), a formal F.I.R., vide Nanpur P.S. Case



No. 227 of 2010, was registered for offence under Sections 302, 201 of the I.P.C. against the sole appellant. After coming to know about the occurrence, the appellant surrendered and he was taken into custody.

3. The police, after investigating the case and finding it true against the appellant, on 08-04-2011 submitted chargesheet. On 11-04-2011, learned Sub-Divisional Judicial Magistrate, Pupri at Sitamarhi took cognizance of the offence and after completion of all formalities under Section 207 of the Cr.P.C., on 25-04-2011 the case was committed to the court of sessions and as such, it was numbered as Sessions Trial No. 220 of 2011. On 23-05-2011, charge under Sections 302/201 of the I.P.C. was framed against the sole appellant, which was denied by him and he claimed to be tried.

4. During the trial, to establish its case on behalf of the prosecution, altogether 9 witnesses were examined. Out of 9 witnesses, informant Satrudhan Rai was examined as P.W.4, whereas, P.W.1 Ajay Mahto and P.W.3 Shyam Bihari Rai are witness to the *fardbeyan* and they have deposed like informant (P.W.4). P.W.2 Sanjay Kumar is also co-villager of the informant and he too deposed like the informant, P.W.1 and P.W.3. Sri Chandra Bhushan Thakur (P.W.5) at the relevant time was Block



Development Officer and in his presence, the door was unlocked and dead body was recovered and he prepared the inquest report. P.W.8 Kishun Sah and P.W.9 Shivendra Kumar are witnesses to the inquest report. P.W.7 Dr. Uday Shankar Priyadarshi had conducted *post-mortem* examination on the dead body. Sri Anant Ram P.W.6 is the investigating officer of the case.

5. After completion of the prosecution evidence, the circumstances and evidences, brought on record during the trial, were explained to the appellant and statement of the appellant under Section 313 of the Cr.P.C. was recorded. In statement recorded under Section 313 of the Cr.P.C., the appellant denied all the evidences and took the plea that he was working in Ludhiyana and his wife was staying in the village. He further claimed that his wife was not having good character. Besides this, he took the plea that his wife was residing in village with daughter-in-law. Meaning thereby that he took the plea of '*alibi*'.

6. After placing entire evidence on record, Sri Shankar Kumar, learned counsel for the appellant has argued that the prosecution has not established its case beyond all reasonable doubt. He submits that the appellant without any cogent evidence has been held guilty and convicted taking aid of



Section 106 of the Indian Evidence Act, 1872 (hereinafter referred to as 'Evidence Act'), which is not applicable in view of facts and circumstances of the case. He has argued that it was specific case of the informant, who was examined as P.W.4, that the deceased was having a male child aged about 11 years and son of informant aged about 10 years was also residing with the deceased, however during the trial, the prosecution has not bothered to bring on record evidence of either of two child witnesses i.e. son of the deceased as well as son of the informant. He further submits that the prosecution has seriously erred in not examining any witness from the village Bhadihan, where the deceased was residing. According to learned counsel for the appellant, in the present case, all the witnesses hail from two different villages and none of the witnesses have deposed specifically as to whether either on the date of occurrence or just prior to the occurrence whether the appellant was residing in the village with his wife or not, whereas the appellant in his statement recorded under Section 313 of the Cr.P.C. has taken specific stand that he was doing job in Ludhiyana and he was not present in the village, rather the deceased was staying with daughter-in-law and the appellant has also taken a plea that deceased was not having good character. A plea was taken by



the appellant in his statement recorded under Section 313 of the Cr.P.C. that there was possibility that some other person had killed her and buried her dead body inside the house.

7. As per learned counsel for the appellant, it is true that since the dead body of deceased was found in the house of the appellant, there was possibility for application of Section 106 of the Evidence Act, but for proving this charge, some other corroborative evidence was required to be brought on record, which has not been done by the prosecution. In sum and substance, it has been argued that investigation in the case was done in purely perfunctory manner. This is the reason that the Investigating Officer had not bothered either to record the statement of the son of the deceased or son of informant, who were allegedly residing with the deceased. The prosecution has also not produced any witness from the village Bhadihan, who would have stated that the appellant was seen with the deceased in the house just prior to the occurrence. Accordingly, it has been argued that the learned Trial Judge has committed serious error in convicting the appellant only with the aid of Section 106 of the Evidence Act without any other corroborative or plausible evidence. It has also been argued that appellant is languishing in jail without any fault since 10-01-2011.



8. Sri Satya Narayan Prasad, learned Addl. Public Prosecutor has vehemently opposed the appeal. He has argued that it is admitted fact that the appellant was husband of the deceased. It is also not in dispute that dead body of deceased was found buried inside the house, which was locked from outside and as such, presumption would be that appellant has himself committed murder of his wife and after burying the dead body inside the house and locking the house fled away and subsequently, when the fact has come to the fore regarding the murder, he has taken the plea of *alibi*, which is not appreciable.

9. Besides hearing learned counsel for the parties, we have also minutely examined the entire evidence on record. Before proceeding, it would be necessary to firstly examine as to what the informant (P.W.4) has deposed during the trial.

10. The informant Satrudhan Rai was examined as P.W.4. In his evidence, he stated that at the time of occurrence, he was in Delhi. His wife telephonically informed him that his sister Meena Devi had died, who was killed by his brother-in-law (appellant). Thereafter, he came back and with 4-5 persons, including Ajay Mahto (P.W.1) and Sanjay Kumar (P.W.2), he went to the village of his brother-in-law (appellant), where he did not find anyone and house was locked from the outside.



Thereafter, he informed Nanpur Police Station. On information, the police arrived with one another officer. Thereafter, lock of the house was broken. Inside the house, the dead body was buried, which was taken out. Thereafter, paper was prepared. The dead body was in decomposed condition. He gave his *fardbeyan* and he also put his signature on it. This witness proved his signature, which was marked as Ext. 1/2. Thereafter, the dead body was sent for *post-mortem*. In the *fardbeyan*, this witness has categorical stated that deceased was living with her son aged about 11 years and son of informant aged about 10 years was also residing with the deceased.

11. P.W.1 Ajay Mahto has deposed almost in similar manner like informant (P.W.4), but he deposed that he was informed by P.W.4 regarding the occurrence and thereafter, he accompanied the informant to the village Bhadihan. He had also put his signature on the *fardbeyan* and same was marked as Ext. 1.

12. P.W.2 Sanjay Kumar is co-villager of the informant, who had gone with the informant to the village Bhadihan. He too deposed in similar manner like P.W.1.

13. P.W.3 Shyam Bihari Rai is co-villager of the informant/P.W.4 and he too had put signature on the *fardbeyan*,



which was marked as Ext. 1/1. He has also stated almost like the informant, P.W.1 and P.W.2.

14. P.W.8 Kishun Sah and P.W.9 Shivendra Kumar are witnesses to the inquest report. In their presence, inquest report was prepared and they put their signature on inquest report and their signature was marked as Ext. 2/4 and 2/5 respectively.

15. P.W.7 Dr. Uday Shankar Priyadarshi on 31-12-2010 was posted at Sadar Hospital, Sitamarhi. He was one of the member of the Medical Board, which conducted *post-mortem* on the dead body of Meena Devi. Other members were Dr. Shakil Anjum and Dr. Sachida Nand Singh. Both were Medical Officers in Sadar Hospital, Sitamarhi. The *post-mortem* was held on 31-12-2010 at 2:20 PM and following findings were recorded by him:-

“External Findings:-

All the exposed part of the body covered with mud sign of decomposition namely features blotted and distorted, eyes protruded, mouth open, tongue swollen and protruded, lips everted, skin paled off at places. Breast swelled and distorted. External genitalia swollen and distorted, uterus protruded through vagina. No external injury present on any part of body. Neck – NAD.

Internal Findings:- On opening of skull cranium intact, Brain matter congested and Neck- NAD. Chest - Rib cage intact. Both lung intact and congested, heart intact and both sides filled with dark blood.

Abdomen – on opening of abdominal cavity - gas escaped with a loud hiss. All abdominal viscera intact and congested. Stomach contains semi-digested



food particle. Urinary bladder – empty. Uterus normal in size.

Time elapsed since death and P.M. held within – 5 days (Five days).

Opinion – The cause of death could not be ascertained.”

This witness stated that the *post-mortem* report was in his pen and signature and it was marked as Ext. 4. On examination of the evidence of P.W.7, it appears that no definite finding was recorded on the point of injury on the person of the deceased. However, he stated that time elapsed since death to the time of *post-mortem* was within five days, whereas the informant/P.W.4 in his *fardbeyan*, which was recorded on 30-12-2010, has stated that about eight days back, he was informed by his wife that the appellant had killed sister of the informant and buried the dead body.

16. P.W.6 Sri Anant Ram on 30-12-2010 was posted in Nanpur Police Station as Officer in-charge and on the same date at 07:15 hrs. (5:15 PM) on telephone, he got information that in village, *chotka Bhadihan*, one female was killed and dead body was concealed. After recording *sanha* entry, on the same date, he proceeded to the place of occurrence and in the village, he came to know that Satto Rai (appellant) had killed his wife and concealed her dead body inside the house and door and windows were locked from outside and he had fled away. Thereafter, he



gave information to the Sub-Divisional Officer regarding the incident. Thereafter, Block Development Officer was deputed and in his presence, the lock on the door was broken and dead body was recovered, which was buried in a corner. He recorded *fardbeyan*, which was marked as Ext. 3. The endorsement on the *fardbeyan* was marked as Ext. 1/3. In his presence, the Block Development Officer with the aid of light of petromax prepared inquest report, which was marked as Ext. 2/3. Then he (P.W.6) recorded re-statement of the informant and witnesses present there and thereafter, he submitted charge-sheet.

17. After closure of the prosecution evidence, statement of appellant was recorded under Section 313 of the Cr.P.C., in which he took specific plea that he was doing work in Ludhiayan and after coming to know about the occurrence, he came to his village. The appellant further took a plea that deceased was residing in village with daughter-in-law and he has claimed that his wife was not having good character and he raised apprehension regarding her killing by some unknown person.

18. On going through entire evidence, it is evident that prosecution has assigned no reason as to under what circumstances, the son of the deceased, who was aged about 11



years and residing with the deceased on the date of occurrence, was not examined by the prosecution nor there is any explanation regarding recording statement of son of the informant (P.W.4), whereas informant in his *fardbeyan* had specifically stated that deceased was residing with her son namely Rohit Kumar and son of informant namely Anil Kumar aged about 10 years. They were residing with deceased in village Bhadihan. During trial, the prosecution has not produced any witness from the village Bhadihan to substantiate that the appellant was seen residing with the deceased either on the date of occurrence or just prior to the date of occurrence. There is no explanation by the prosecution as to under what circumstances, any of the villager of village Bhadihan, where occurrence had taken place, was not examined. This suggests that the investigating officer had conducted the investigation in pure perfunctory manner. During the trial, save and except to establish the fact that the appellant was husband of the deceased, no other plausible evidence has been brought on record by the prosecution to establish that it was only and only appellant, who had committed murder of his wife, whereas the appellant in his statement recorded under Section 313 of the Cr.P.C has specifically stated that he was doing work in Ludhiyana. It is



true that in a circumstance, in which, a wife is done to death in the house of her husband and dead body was buried, in normal course by applying provision contained in Section 106 of the Evidence Act, the husband would be held guilty, but for doing the same, it is also necessary to examine some other corroborative evidence. In the present trial, the prosecution has not been able to produce any other plausible evidence to show that on the date of occurrence or just prior to the date of occurrence, the appellant was seen residing in his village with the deceased. Non-examination of the son of the deceased and also son of the informant, who was residing with the deceased, also creates serious doubt on the prosecution case. During the trial, none of the villager from village Bhadihan, in which village dead-body of the deceased was found, had been examined, which also creates serious doubt on the prosecution case.

19. In view of aforesaid facts and circumstances, we are of the considered opinion that the prosecution has not been able to establish its case beyond all reasonable doubt and as such, by way of extending benefit of doubt, it is desirable to interfere with the judgment of conviction and sentence.



20. Accordingly, the judgment of conviction dated 25-04-2012 and order of sentence dated 27-04-2012 passed in Sessions Trial No. 220 of 2011 (arising out of Nanpur P.S. Case No. 227 of 2010) by Sri Sudhakar Singh, learned Additional Sessions Judge, Fast Track Court No. 2, Sitamarhi is hereby set aside and appeal is allowed.

21. The appellant is in custody and since the judgment of conviction and sentence has been set aside, it is directed to release him forthwith, if not wanted in any other case.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
CAV DATE	NA
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