

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.494 of 2013

Arising Out of PS. Case No.-326 Year-2009 Thana- GAYGHAT District- Muzaffarpur

Raghvendra Rai , son of Sri Mahindra Rai, Resident Of Village - Raina, P.S.
Gaighat, District- Muzaffarpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Sri Madhusudan Kumar, Advocate
For the Respondent/s : Sri Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 19-09-2018

1. The sole appellant has preferred the present Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) against judgment of his conviction and sentence in Sessions Trial No. 338 of 2012 passed by learned Adhoc Additional Sessions Judge - I, Muzaffarpur. By judgment dated - 24.05.2013 the sole appellant was convicted for offence under Section 302 of the Indian Penal Code, 1860 [hereinafter referred to as the “I.P.C.”], however, he was acquitted from charge under Section 304(B) of the I.P.C. and by order dated: 25.05.2013 he was sentenced to undergo imprisonment for life under Section 302 of the I.P.C. and directed to pay a fine of Rs. 5,000/-. In default of payment of fine, he was directed to



further undergo imprisonment for two years. The judgment of conviction and sentence was passed by Sri Phool Chandra Chaudhary, learned Adhoc Additional Sessions Judge -I, Muzaffarpur [hereinafter referred to as the “trial judge”] in Sessions Trial No. 338 of 2012 (arising out of Gaighat P.S. Case No. 326 of 2009).

2. Short fact of the case is that on 11.12.2009 a written information was submitted by one Sri Sunil Kumar (P.W. 7) disclosing therein that his younger sister was married with the appellant/ Raghvendra Rai , S/o Mahendra Rai, village - Rauna Kuchahari, P.S. -Gaighat, District- Muzaffarpur. The said marriage was solemnized on 18.07.2008. In the marriage he spent money as per his capability and as gift he had given Rs. 1,00000/- as well as ornaments and clothes. After marriage when his sister went to her in-law's house in village -Rauna Kuchahari, for sometime she led peaceful married life, however, after some time his sister repeatedly on mobile informed the informant that appellant and in-laws were demanding motorcycle and more money. After getting such information he went to village -Rauna Kuchahari and told his brother-in-law (appellant) and his father that in marriage he had incurred huge expenditure and at the moment he was not in a condition to provide motorcycle, however, he assured that after



some time if money is arranged he will provide motorcycle and pay demanded money, however, his brother-in-law [appellant] , father-in-law/ Mahendra Rai, mother –in-law / Chandrakala Devi, ननद [sister of husband of deceased] /Amrita Kumari, भैसुर [elder brother of husband of deceased] - Kaushal Rai , चचेरा ससुर [cousin father –in-law] - Sakal Rai, S/o Late Jaleshwar Rai; चचेरा ससुर / Chanardeo Rai, S/o Late Jaleshwar Rai, चचेरी सास (cousin mother-in-law) / Reshmi Devi, W/o Chanardeo Rai; चचेरा भैसुर / Manoj Rai, S/o Chanardeo Rai and Pikal Rai , S/o Sakal Rai; all residents of village - Rauna Kuchahari started repeatedly assaulting his sister and administered different types of torture . His sister was also blessed with a male child, aged about three months. All such informations were given by his sister through mobile. On 11.12.2009 at 1.00 P.M. one Mahesh Rai on mobile gave information that his sister was done to death by aforesaid accused persons by assault and pressing her neck. After getting such information the informant with his uncle -Subhash Rai, Kailash Rai (P.W. 2), cousin brother / Anil Kumar, S/o Kailash Rai (not examined), cousin brother -Pankaj Kumar , S/o Subhash Rai (not examined) along with his co-villager/ Laxman Rai went to Rauna Kuchahari to the house of Mahendra Rai [father of the appellant] and saw that his sister had already died.



Three month child of his sister was taken away somewhere else by all the accused persons. Thereafter, the informant through mobile informed the Police Station, then Police Officials arrived at the place of occurrence.

3. The informant in its written report claimed that his sister was done to death due to non-fulfillment of demand of dowry by assaulting and pressing her neck. The said written report was signed by the informant and on the basis of the said written report on 11.12.2009 at 22.15 Hours (10.15 P.M.) a formal F.I.R. vide Gaighat P.S. Case No. 326 of 2009 was registered for the offence under Section 304(B) , 34 of the I.P.C. against ten accused persons which includes the appellant . After investigation Police found accusation against appellant and his mother / Chandrakala Devi true and showing them as absconder on 29.06.2011 submitted charge -sheet, however the Investigating Agency exonerated other eight F.I.R. named accused persons. After submission of charge – sheet on the basis of lower court record it appears that on 22.11.2011 the appellant surrendered before the court below and the learned Chief Judicial Magistrate, Muzaffarpur on 21.12.2011 took cognizance of the offence. The case was committed to the court of Sessions on 21.05.2012, and as such , it was numbered as Sessions Trial No. 338 of 2012. On



04.07.2012 charge was jointly framed against the appellant and his mother / Chandrakala Devi for the offence under Section 302/34 and 304B/34 of the I.P.C.

4. To prove its case on behalf of the prosecution altogether ten witnesses were examined. However, out of ten witnesses, P.W. 1 - Ram Nandan Rai, P.W. 2 - Kailash Rai (uncle of the deceased), P.W. 3 - Laxman Rai, P.W. 4 - Nand Kishore Rai and P.W. 5 - Chandeshwar Rai since did not support the prosecution case, were declared hostile. The informant /Sunil Kumar was examined as P.W. 7. The doctor who conducted post – mortem examination on the dead body of the sister of the informant namely, Dr. Bipin Kumar was examined as P.W. 6. P.W. 8 / Satyendra Ram was posted as Sub Inspector of Police, Gaighat Police Station and he submitted charge -sheet after approval of senior officials and P.W. 10 (Arvind Kumar) who on 11.12.2009 was Sub Inspector of Police, Gaighat Police Station is the Investigating Officer of the case.

5. After conclusion of the prosecution evidence, on 02.04.2013 circumstances and evidences purported to be brought on record, were explained to the appellant and his statement under Section 313 of the Cr.P.C. was recorded in which he claimed



himself as innocent and also claimed that his wife died due to fall of roof and it was an accidental death.

6. From the defence side also two witnesses namely : Raj Kishore Rai (D.W. 1) and Mahesh Manjhi (D.W. 2) were examined to substantiate that it was not a case of murder but accidental death. A plea was also taken by the defence that at the time of occurrence neither the appellant nor his mother was present at the place of occurrence. The learned trial judge accepting the plea of *alibi* in respect of mother of the appellant/ Chandrakala Devi by the same judgment acquitted her, however passed judgment of conviction and sentence as referred to here-in-above against the appellant.

7. Sri Madhusudan Kumar, learned counsel for the appellant after placing entire evidences on record has argued that virtually the case was based on no evidence, however, the learned trial judge to the reasons best known to him , has passed judgment of conviction and sentence. It has been argued that uncle of the deceased whose name was mentioned in the fardbyan i.e. written report, namely: Kailash Rai has not supported the prosecution case. Even the informant who was examined as P.W. 7 has not whispered as to whether his sister was ever tortured due to non-fulfillment of demand of dowry or not, neither he stated that his



sister was done to death by the appellant, even then, the learned trial judge has passed the judgment of conviction and sentence. P.W. 7 in his cross -examination himself has accepted that his sister died due to fall of pole of the house. According to learned counsel for the appellant, post- mortem examination report also does not support the prosecution case and this has further been clarified by P.W. 6/ Dr. Bipin Kumar , who conducted post-mortem examination on the dead body of the deceased. In his cross- examination he stated that death was possible due to fall of some heavy substance from a height of 6-7 feet. It has been argued that though in the F.I.R. it was alleged that deceased was done to death by pressing of neck, in post -mortem examination report, there is no such finding; nor the doctor has given any opinion on this very point, rather on side of one portion of the deceased three injuries were found, which indicate that it was death due to accident. It has also been argued that though there was no evidence and nothing was brought on record during the trial, at the stage of recording statement under Section 313 of the Cr.P.C. certain circumstances were put to the appellant as if the appellant was involved in murdering the sister of the informant by pressing her neck. He submits that there is absolutely non-compliance of provision under Section 313 of the Cr.P.C. In sum



and substance, it has been argued that the judgment of conviction and sentence is not sustainable in the eye of law and the Appeal is required to be allowed.

8. Sri Ajay Mishra, learned Additional Public Prosecutor has opposed the Appeal. He submits that it is true that from defence side a stand was taken that death had occurred due to fall of roof which had fallen in storm, the Investigating Officer in his evidence has made categorical statement that on the date when occurrence had taken place there was no storm in the locality. He further submits that Police after arrival at the place of occurrence prepared inquest report and in inquest report also it was mentioned that dead body was having mark on the neck. Carbon copy of inquest report was proved and marked as Ext. 4, however it was with objection. According to Sri Mishra, learned A.P.P. it is not a matter of number of witnesses in a criminal trial, rather quality of witnesses is required to be examined. According to Sri Mishra, learned A.P.P. evidence of informant / P.W. 7 was itself sufficient for passing judgment of conviction and sentence, and as such, there is no reason to interfere with the impugned judgment.

9. Besides hearing learned counsel for the parties, we have examined entire evidences available on record and after



going through the same *prima facie* we are of the opinion that prosecution has miserably failed to establish its case, however, the learned trial judge has passed the judgment of conviction and sentence. Before proceeding, it would be necessary to notice as to what the informant has deposed during the trial. The informant – Sunil Kumar was examined as P.W. 7. In his evidence he stated that he was the informant and lodged the case against the accused. The date of occurrence was 11.12.2009. He resides in Muzaffarpur. His sister was married with Raghvendra Rai (appellant) in 2008. His sister for some time was all right. He stated that he was not having any knowledge regarding any demand. He stated that he received telephone call. He went to the in-law's house of his sister with Kailash Rai (P.W. 2) and saw that his sister was already dead. Police Station was informed by him through mobile. The dead body was seen by the Police and taken in its possession. He went to Police Station and gave his statement in writing. Information was given in writing that husband, mother-in-law and father-in-law all had killed. He stated that *fardbyan* was in his writing. The said *fardbyan* was marked as Ext. 2. Two days after the occurrence his statement was recorded. He also claimed to identify all the accused persons. Police carried dead body to Police Station and thereafter it was



carried by Police to S.K. Medical College And Hospital, Muzaffarpur. Post -mortem was done. After post- mortem examination, the dead body was taken by Mahendra Rai/ father -in- law of the deceased. In his cross- examination in paragraph – 2 he stated that on the basis of information he had lodged the case. The said information was given by Mahesh Rai. He further stated that the house in which his sister was residing had fallen. The house was खपड़ा फोस . He further stated that it was love marriage in between the appellant and his sister. In paragraph – 3 of his cross -examination he stated that subsequently he got information that his sister was smashed by pole (खम्भा) which had fallen. He further clarified in paragraph -3 of the cross- examination that cremation was done by in-laws of his sister. He further reiterated that **“it is true that his sister died in the house which had fallen”**. In paragraph -4 of his cross- examination he further stated that entire house was खपड़ा फोस and how it had fallen he was not aware. On examination of the evidence of P.W. 7 we do not find any material which constitutes commission of offence by the appellant since the informant in categorical term has stated that his sister died due to fall of roof so it was a clear cut case of accidental death. This fact finds further support from the evidence of P.W. 6 / Dr. Bipin Kumar. Dr. Bipin Kumar on 12.12.2009 was



posted as Tutor , Department of F.M.T., S.K. Medical College and Hospital and on same day at 12.30 Hours he conducted post-mortem examination on the dead body of the deceased and he proved the post -mortem examination report, which was marked as Ext. 1. In his evidence he stated as follows:-

“On dated 12-12-2009, I was posted as Tutor department of FMT, SK Medical College, Muzaffarpur. On the same date at 12.30 PM, I performed post- mortem examination on the dead body of Munni Kumari aged about 22 years, wife of Raghwendra Rai of Village - Rauna Kuchahari, P.S. -Gaighat, Distt.- Muzaffarpur. Dead body was identified by Chowkidar 1/13 Yogi Rai. Dead body was average built with Rigor Mortis present in lower limb only and following ante- mortem injury was found:-

1. One abrasion 3” x 1/2” over right upper part of chest at the level of right clavical.

2. One abrasion 5” x 2” over right upper part of the chest extending one meter below right breast up to lower margin of postal area.

3. One abrasion 1” x 1/4” x 3” lateral to right present on opening the chest cavity there was fracture of 5-6th rib of right side with puncture of right lung. Chest cavity was filled with fluid blood, there was brushing over right lobe of liver.

Opinion:- The deceased died due to hemorrhage and shock as a result of above mention injury.

Injury were caused by impact of hard and blunt substance.

Time since death:- within 24 to 30 hours.”

In paragraph- 2 of his cross -examination he stated that all the three injuries were on right side of the body and stated as follows:-

“All the three injury on the right side of the body. These injury can be occurred due to impact of hard and blunt substance. These injury may occur if a heavy substance fall from the moderate height. Moderate height may range up



to 6 to 7 feet. Neither dead body was known to me nor the Chowkidar who identified the dead body known to me.”

10. P.W. 8 / Satyendra Ram was Sub Inspector of Police in Gaighat Police Station and he simply submitted charge-sheet with approval of senior officials and he proved copy of charge-sheet , which was marked as Ext. 3.

11. P.W. 10 (Arvind Kumar) who was Sub Inspector of Police , Gaighat Police Station on 11.12.2009, is the Investigating Officer of the case and he stated that on 11.12.2009 he was given charge of investigation of Gaighat P.S. Case No. 326 of 2009. Thereafter, he visited the place of occurrence, prepared inquest report and he described about the place of occurrence that was the house of the appellant. In his evidence he stated that the house was खपड़ा फोस and in the courtyard in Eastern side bricks were found in scattered position, however he stated that during inspection he found every other articles in normal position. The inquest report was proved and marked as Ext. 4, however it was with objection. He stated that thereafter he recorded statement of witnesses including statement of Kailash Rai (P.W. 2) .

12. P.W. 1 (Ram Nandan Rai), P.W. 3 (Laxman Rai), P.W. 4 (Nand Kishore Rai), P.W. 5 (Chandeshwar Rai) and P.W. 9 (Pankaj Kumar) denied that their statement was recorded



by the Police nor they were aware about the case, and as such, all those witnesses were declared hostile.

13. P.W. 2 / Kailash Rai (uncle of the deceased) stated that his niece was married with appellant in the year 2008 and he got information through mobile regarding death of his niece. He stated that Munni Devi (deceased) was living in her in-law's house with peace. He also had not heard about demand of any dowry. In his presence Police arrived but did not inspect the dead body. However, this witness was declared hostile and his attention to his previous statement was drawn.

14. On examination of aforesaid entire evidences we find that the case was based on no evidence, even then, the appellant has been held guilty and convicted. It was specific case / defence of the appellant that his wife died accidentally due to fall of the house, which fact has been corroborated from the evidence of the informant himself. Despite the fact that during trial no evidence was brought on record showing involvement of the appellant, without any rhyme and reason, certain facts were explained to the appellant at the time of recording his statement under Section 313 of the Cr.P.C. which were not at all on record. Question no. 3 indicates that he was asked as if witnesses had stated that the appellant had demanded motorcycle and money



from Munni Kumari (deceased) which information was given by her to his father and brother, whereas, such evidence was not brought on record, which is evident from examination of evidence of P.W. 7 / informant, otherwise, all other witnesses had turned hostile. Similarly, 4th question was as if witnesses had stated that on 11.12.2009 the appellant and others had assaulted Munni Kumari and by pressing her neck she was done to death. Again on going through entire evidence we have not found any such evidence which suggests that any of the witnesses had stated that deceased was done to death by pressing her neck. In replying one another question regarding finding mark of injury on the body of the deceased it was replied that due to storm house had fallen and deceased received such injury. On going through the statement recorded under Section 313 of the Cr.P.C. which has been recorded in the present case, we are of the considered opinion that it was not true compliance of the said provision since after closure of prosecution evidence it is mandatorily required that only evidences which are brought during the trial should be explained to the accused and not to put / explain any circumstance or evidence which is not on record.



15. On going through the entire evidence, we are of the considered opinion that in a case of no evidence the learned trial judge has passed judgment of conviction and sentence.

16. Accordingly judgment of conviction dated- 24th May 2013 and sentence dated - 25.05.2013 passed by Sri Phool Chandra Chaudhary, learned Adhoc Additional Sessions Judge – I, Muzaffarpur in Sessions Trial No. 338 of 2012 (arising out of Gaighat P.S. Case No. 326 of 2009) is hereby set aside and the Appeal is allowed.

17. The appellant is inside jail and since the impugned judgment of conviction and sentence has already been set aside, it is hereby directed to release the appellant namely- Raghvendra Rai forthwith, if not required in any other case.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26 -09-2018
Transmission Date	26-09-2018

