

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.214 of 1995

1. Baidya Nath Singh s/o Late Amar Singh
2. Ranjit Singh s/o Arjun Singh
Both resident of village- Mahalia, P.S. - Supaul, District - Supaul

... .. Appellant/s

Versus

The state of bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Surya Nilambari, Amicus Curiae
For the Respondent/s : Mr. Dilip Kumar Sinha, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 04-07-2019

This criminal appeal has been preferred against the judgment of conviction and sentence order dated 04.07.1995 and 05.07.1995 respectively passed by the learned Additional District & Sessions Judge, Supaul (hereinafter referred to as Trial Court) in Sessions Trial No. 26/1994 by which and whereunder he convicted the appellants for the offences punishable under Sections 302/34 and 201 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life for the offence punishable under Section 302 read with section 34 of the Indian Penal Code and to further undergo



rigorous imprisonment for seven years for the offence punishable under Section 201 of the Indian Penal Code. However, the learned Trial Court directed that both the above stated sentences shall run concurrently.

2. It is pertinent to note here that the appellants along with two other co-accused, viz. Chandi Thakur and Awadhesh Kumar Singh faced trial before the Trial Court and the Trial Court acquitted co-accused Chandi Thakur and Awadhesh Kumar Singh whereas, convicted the appellants by passing the impugned judgment which is under challenge in the instant criminal appeal.

3. Briefly stated prosecution case is that P.W. 3, Md. Musa, the then *Dafadar*, Supaul P.S. gave his *fard-e-beyan* before P.W. 10, namely, Sri Ram Singh on 16.03.1992 at 8.15 A.M. in the orchard of Baidya Nath Singh situated at village Malhani, to this effect, that in previous night while he was on patrolling duty, he got a rumour at about 11.30 p.m. that appellants having committed the murder of daughter-in-law of appellant no. 1 concealed her dead-body in their orchard. Having got the aforesaid rumour P.W. 3 along with *Chowkidar* Siya Ram Paswan (P.W. 2) went near the house of appellant Baidya Nath Singh to verify the aforesaid rumour, but the



appellants as well as his family members were found absconding from their house. P.W. 3 started searching the dead-body with the help of villagers but could not succeed to trace the dead-body out and, in the meantime, P.W. 13 Rajmani Kumar Singh and P.W. 5 Asarfi Paswan came there and disclosed that in morning of 15.03.1992, while they were grazing their cattle near the field of appellant Baidya Nath Singh, they saw appellants in their orchard in suspicious condition. The aforesaid P.W. 13 and P.W. 5 also disclosed that appellant Baidya Nath Singh scolded them and having seen the conduct and behaviour of appellant Baidya Nath Singh they became surprised, but they could not understand the reason of rude behaviour of appellant Baidya Nath Singh. However, they left the orchard but again in between 10.00 A.M to 11.00 A.M. they went near the field where they had seen the appellants in the morning and they found that new soil was dug out in the field of Baidya Nath Singh and some firewood had been kept there. They further disclosed that out of curiosity they removed the firewood and found dead-body of Pramila Devi, the daughter-in-law of appellant, namely, Baidya Nath Singh in ditch. Furthermore, they disclosed that they noticed injury on the neck of Pramila Devi and her dead-body was naked. P.Ws. 5 and 13 further claimed before P.W. 3 that



they fled away from there, but out of fear they did not disclose the aforesaid fact before any other. However, in the evening of 15.03.1992 they disclosed the aforesaid fact to some villagers. P.W. 3 further claimed in his *fard-e-beyan* that he asked P.W. 5 and P.W. 13 to show the place where the dead-body had been buried and, thereafter, P.W. 5 and P.W. 13 led the P.W. 3 to the field of appellant Baidya Nath Singh where in a ditch P.W. 3 found a naked dead-body of a woman having injury on her neck. The villagers disclosed that the aforesaid dead-body was of daughter-in-law of appellant Baidya Nath Singh. The villagers also disclosed before P.W. 3 that the deceased was wife of Arjun Singh who happens to be son of appellant Baidya Nath Singh. Furthermore, villagers disclosed that the deceased Pramila Devi had fled away from her matrimonial home 5 to 10 years ago and, thereafter, appellant Baidya Nath Singh got solemnized another marriage of his son Arjun Singh, who after marriage, started residing at Delhi along with his second wife and other family members. Villagers also disclosed that six months prior to the alleged occurrence, deceased Pramila Devi returned and her son, appellant no. 2 Ranjit Singh, took her to home. But, again some days prior to the alleged occurrence deceased Pramila Devi fled away from the house of appellant no. 2,



namely, Ranjit Singh who again brought deceased Pramila Devi to his home from village Ekma. The villagers also disclosed that the deceased Pramila Devi was a lady of questionable character due to which her in-laws were not happy and the in-laws of Pramila Devi used to quarrel with deceased Pramila Devi.

4. On the basis of aforesaid *fard-e-beyan* of P.W. 3, Supaul P.S. Case No. 60/1992, for the offence punishable under Sections 302, 201 of the Indian Penal Code was registered and, accordingly, formal First Information report was drawn against the appellants on the same day. P.W. 10, Sri Ram Singh took charge of investigation. He inspected the place of occurrence and recorded the statement of witnesses. Thereafter, prepared inquest report. He arrested the appellants and, allegedly, appellant no. 2 Ranjit Singh confessed his guilt and also took P.W. 10 to the place of occurrence where deceased was killed and on the basis of confessional statement of appellant no. 2 bloodstained *Saree, Blouse, Ganji, Kachiya* etc. were recovered from close vicinity of house of the appellant no. 2. P.W. 10 prepared seizure list and also recovered broken bangles bloodstained leaves of *Jalkumbhi* etc. and prepared another seizure list. P.W. 10 got recorded statements of P.W. 5 and P.W. 13 under Section 164 of the Cr.P.C and after completion of



investigation he submitted charge-sheet against appellants and two others for the offences punishable under Sections 302, 201/34 of the Indian Penal Code. The cognizance of the offence was taken and the case was committed to the Court of Sessions, in usual way, which was registered as Sessions Case No. 26/1994.

5. The appellants along two other co-accused stood charged for the offences punishable under Sections 302, 201/34 of the Indian Penal Code whereas, one Chulhai Thakur was separately charged for the offence punishable under Section 302 of the Indian Penal Code. The charges were read over and explained to appellants and others to which they denied and claimed to be tried.

6. In course of trial, prosecution examined, altogether, thirteen prosecution witnesses and got exhibited some documents as documentary evidence, such as, Seizure lists, inquest report, post-mortem report, *fard-e-beyan* and formal F.I.R as well as other documents. The statements of appellants and others were recorded under Section 313 of the Cr.P.C in which they reiterated their innocence and claimed their false implication. No evidence was adduced by the appellants as well as others in support of their defence and from perusal of



statements recorded under Section 313 of the Cr.P.C as well as trends of cross-examination of prosecution witnesses, we find that appellants claimed their innocence in their defense.

7. Learned trial court after analyzing the evidence of the prosecution and also taking into consideration the circumstantial evidence convicted the appellants whereas, acquitted the others basically having relied upon extrajudicial confessional statement of appellant no. 2 as well as other circumstances and incriminating articles which are said to have been recovered in course of investigation.

8. Ms. Surya Nilambari learned *Amicus Curiae* appearing for appellants assailed the impugned judgment of conviction and sentence order and argued that the learned trial court has committed error in convicting and awarding sentence to the appellants as there was virtually no evidence against the appellants to connect them in the alleged crime. She submitted that the learned trial court has placed reliance upon so-called extrajudicial confession of appellant no. 2 as well as recovery said to be made on the basis of abovestated extra judicial confession of appellant no. 2. She submitted that, as a matter of fact, no extra judicial confession was brought in evidence by the prosecution because P.W. 10 has only stated before the trial



court that the appellant no. 2 confessed his guilt, but P.W. 10 failed to describe the entire statements of appellant no. 2. She further submitted that admittedly, no confessional statement of appellant no. 2 was recorded and neither any oral confessional statement nor written confessional statement of appellant no. 2 was brought on record. Therefore, as a matter of fact, there is no confessional statement of appellant no. 2 on the record. She further submitted that when there was no confessional statement of appellant no. 2 on record, the so-called recovery on the basis of confessional statement of appellant no. 2 is also doubtful.

She, next, submitted that P.W. 10 claimed that on the basis of disclosure made by appellant no. 2 bloodstained *Saree*, *Blouse* etc. were recovered but prosecution utterly failed to prove that seized bloodstained *Saree*, *Blouse* etc. were of deceased Pramila Devi. She, further, submitted that the seized bloodstained *Saree*, *Blouse*, *Kachiya* etc. were not sent for chemical examination. Moreover, P.W. 10 admitted in his cross-examination that he did not put any mark on seized articles and, therefore, it is obvious that prosecution has failed to prove that seized articles were of present case. She further submitted that the prosecution was duty bound to prove its case beyond all shadow of reasonable doubts, but prosecution failed to do so.



She further submitted that the learned trial court did not record the statements of appellants properly as no specific question regarding the recovery of articles as well as making of so-called extrajudicial confession was asked from appellant no. 2. She further submitted that so far as appellant no. 1 is concerned, he was not asked regarding the circumstances over which the prosecution had placed reliance and therefore, the appellants could not get opportunity to explain the circumstances which had been used by the trial court for convicting them.

She, further, submitted that admittedly, none had seen the actual killing of the deceased nor any prosecution witness claimed to have seen the appellants digging the soil or burying the dead-body of the deceased and P.W. 5 claimed only to this extent that he as well as P.W. 13 had seen the appellants in their orchard in suspicious condition but even if the aforesaid claim of P.W. 5 assumed to be true, then also, the aforesaid circumstances could not have sole basis of conviction of the appellants because suspicion, however, may be strong could not take place of evidence. She, further, submitted that in the backdrop of aforesaid facts, it can easily be said that the learned trial court passed erroneous judgment in respect of appellants



and therefore, the impugned judgment can not be sustained in the eye of law.

9. On the other hand, learned Additional Public Prosecutor although supported the impugned judgment of conviction and order of sentence but, in course of his argument, he fairly conceded this fact that prosecution case was totally based on circumstantial evidence and none had seen the actual killing of the deceased. Learned Additional Public Prosecutor further submitted that the dead-body of the deceased was found in the field of appellants and the appellants were seen in suspicious condition near the place from where the dead-body was found prior to recovery of the dead-body. He further submitted that appellant no. 2 made extra judicial confession leading to recovery of bloodstained clothes of deceased as well as *Kachiya* which had been used in committing the murder of the deceased. He submitted that all the aforesaid circumstances clearly point out fingers towards the guilt of the appellants and, as a matter of fact, the prosecution successfully proved the complete chain of event to prove the guilt of the appellants and therefore, there was no need to interfere in the impugned judgment of conviction and order of sentence.

10. Having heard the rival contentions of the parties,



we went through the record along with lower court records. It is an admitted position that the prosecution case hinges upon circumstantial evidence and none of the prosecution witnesses had seen the actual killing of the deceased nor any of the prosecution witnesses claimed to have seen the appellants digging the soil or burying the dead-body of the deceased into the ditch.

11. As we have already stated that altogether thirteen prosecution witnesses were examined by the prosecution in course of trial and it is obvious from perusal of statements of the prosecution witnesses that except P.W. 5, none of the prosecution witnesses claimed to have seen the appellants in the morning of 15.03.1992 in their orchard in suspicious condition. Although, P.W. 3 claimed in his statement that P.W. 5 and P.W. 13 had disclosed before him as well as P.W. 2 that they had seen the appellants in the morning of 15.03.1992 in their orchard in suspicious condition but, in course of trial P.W. 13 was tendered by the prosecution as no question was asked by the prosecution from P.W. 13 though he was cross-examined by the defence and in his cross-examination he stated that P.W. 5 had disclosed before him that there was dead-body in orchard. Therefore, there is only P.W. 5 who claims that he had seen the appellants near



the place from where dead-body was recovered on 15.03.1992.

12. Now, let us scrutinize the statement of P.W. 5 Asarfi Paswan. This witness claimed that on the alleged date of occurrence he was grazing buffalo near the field of appellant Baidya Nath Singh and at that time P.W. 13 was also grazing his Buffalo along with him. Furthermore, P.W. 5 claims that his Buffalo started running and, in the meantime, appellants saw them and asked him to leave the place. This witness though claims that on the same day at about 11.00 AM he again went there and found dead-body buried in the field. He further claims that he removed the soil and found the dead-body which was of Pramila Devi who happens to be daughter-in-law of appellant Baidya Nath Singh. This witness further claims that he as well as P.W. 13 disclosed the aforesaid fact before the villagers and subsequently, villagers also came to the place where dead-body was found and they saw the dead-body. In the meantime, P.Ws. 1 & 2 and other police officials came there. This witness also claims that he had also seen the appellants while they were washing their hands and feets in a pond. This witness admits that for the first time when he saw the appellants, the appellants were at the middle of the field. This witness further admits that he remained there till 8.00 A.M. and thereafter, he returned to



his home and again he went there at 11.00 a.m. and, thereafter, he saw the dead-body. This witness further admits that when the *Dafadar* and others went to see the dead-body, he had not accompanied them. This witness further stated that he had seen the dead-body at the middle of Kalambagh. Furthermore, this witness admits that prior to occurrence deceased Pramila Devi had fled away from her home. This witness also admitted at para 9 of his cross-examination that he had seen the appellants standing at Kalambagh and at that time the appellants were not carrying spade (Kudali) etc. The perusal of statement of this witness goes to show that he had only seen the appellants at their field and this witness had not seen any instrument in the hands of appellants. P.W. 10 had also not found any instrument which had been used in digging the field. Therefore, even if the testimony of P.W. 5 is accepted to be true, then also, the testimony of this witness does not establish this fact that it were the appellants who had dug the field and had buried the dead-body of deceased.

13. Now, another important witness is P.W. 10 who is Investigating Officer. This witness claims that he recorded the *fard-e-beyan* of P.W. 3 on 16.03.1992 and having taken charge of investigation inspected the place of occurrence. This witness



claims that towards East side of orchard Kalambagh, there was field of Tisi and on South-West corner of the aforesaid field there was a ditch in which the dead-body of deceased was found. This witness described the boundary of the place where the dead-body of deceased was found. This witness at para 6 of his examination –in- chief states that he arrested the appellant no. 2 Ranjit Singh who confessed his guilt and led him to the place where deceased was killed. This witness further states that on the basis of disclosure made by appellant no. 2 bloodstained *Saree, Blouse, Ganji and Kachiya* were recovered from towards West of the house of appellant no. 2. This witness claims that he recovered blood stained leave of *Jalkumbhi* and broken bangles from the place where deceased was killed. On his cross-examination this witness admitted that the dead-body was found at the field of *Tisi* and the aforesaid field of *Tisi* was not in Kalambagh. It is pertinent to note here that P.W. 5 at para 6 of his cross-examination claimed that he had seen the dead-body at the middle of Kalambagh. Furthermore, P.W. 10 admitted at para 17 of his cross-examination that the seized clothes were not got identified by any of the witness nor any person claimed to have seen the deceased wearing the aforesaid clothes. Furthermore, P.W. 10 admitted that he had not sent the seized



articles for chemical examination. Furthermore, P.W. 10 admitted at para 20 of his cross-examination that he had deposited the seized articles in the *Malkhana* but he did not mention the date of sending of the seized articles to *Malkhana* nor mentioned any receipt of the seized articles in the case diary. Furthermore, this witness admits that he did not give any identification mark on the seized articles as it was required by Police Manual. On perusal of statement of P.W. 10, it is obvious that P.W. 10 claimed that appellant no. 2 had confessed his guilt before him but, P.W. 10 has, nowhere, stated as to what statement was made by appellant no. 2 before him. Therefore, it is obvious that the complete statement of appellant no. 2 was not brought in evidence by P.W. 10 and only a vague statement was made by P.W. 10 to this effect that the appellant no. 2 had confessed his guilt leading to recovery of seized articles. In our view, the aforesaid vague statement of P.W. 10 is not sufficient to prove that appellant no. 2 had made his confessional statement leading to recovery of seized articles.

14. No doubt, some of the prosecution witnesses claimed that seized articles were recovered in their presence and they signed over the seizure list but admittedly, not a single prosecution witness claimed that the seized article belonged to



deceased. Furthermore, P.W. 10 admitted in his deposition that none of the person had claimed to have seen the deceased wearing seized Saree and Bangles. Therefore, it is obvious that prosecution could not succeed to prove this fact that the seized articles were of deceased.

15. No doubt, Section 27 of the Evidence Act makes the recovery admissible, if the recovery is made on the basis of confessional statement of accused but in the present case, when prosecution failed to bring confessional statement of appellant no. 2 in evidence, recovery on the basis of so-called confessional statement of appellant no. 2 itself becomes futile and, therefore, in our view, Section 27 of the Evidence Act, is not applicable in the present case. The statement of appellants and others were recorded under Section 313 of the Cr.P.C but, from perusal of statements recorded under Section 313 of the Cr.P.C, we find that the circumstances upon which the prosecution relied as well as so-called extrajudicial confessional statement and recovery of articles, were not placed before the appellants while recording their statements under Section 313 of the Cr.P.C. It is well -settled principle of law that recording of statement under Section 313 of the Cr.P.C is not mere a formality rather it is the duty of trial court to put all the



circumstances and evidence, which came against the accused in course of trial, before the accused so that accused could explain the circumstances and evidences which are against him. In the present case, it is obvious that the learned trial court completely failed to discharge its judicial duty and only general and vague questions under Section 313 of the Cr.P.C was asked from the appellants which caused serious prejudice to the appellants.

16. Since we have noticed the abovestated lacunas and infirmities in prosecution case, we are of the firm opinion that prosecution could not succeed to prove its case beyond all shadow of reasonable doubt and the instant appeal is liable to be allowed.

17. Accordingly, this appeal is allowed and the impugned judgment of conviction and sentence order dated 04.07.1995 and 05.07.1995 respectively passed by the learned Additional District & Sessions Judge, Supaul in Sessions Case No. 26/1994, so far as it relates to the appellants, are, hereby, set aside. The appellants are acquitted of the charges. The appellants are on bail. They are discharged from the liabilities of their bail bonds.

18. Before parting the judgment we would like to mention here that learned *Amicus Curiae* has given her valuable



assistance to this court and, therefore, copy of first and last page of this judgment be handed over to Ms. Surya Nilambari, learned *Amicus Curiae* so that she could make claim for her remuneration before the appropriate authority. We expect from the concerned authority to make payment of Rs. 3,000/- as remuneration to her.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

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CAV DATE	NA
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