

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1034 of 2013**

Arising Out of PS. Case No.-10 Year-2012 Thana- PARASBIGHA District- Jehanabad

Buttan Sao, S/o Late Dhigan Sao, R/O- Vill.- Khaira, P.S.- Paras Bigha, Dist.-
Jehanabad

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Uday Bhanu Roy, Advocate

Ms. Manisha Prakash, Advocate

For the Respondent/s : Mr. Ajay Mishra, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA)**

Date : 10-05-2019

The sole convict has approached this court by filing the present appeal under Section 374 (2) of the Code Of Criminal Procedure, 1973 [hereinafter referred to as the “Cr.P.C.”] against the judgment of his conviction and sentence. The appellant by judgment dated 07.09.2013 has been held guilty and convicted for the offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”) and by order dated 10.09.2013 he has been directed to undergo rigorous imprisonment for life.



2. Short fact of the case as disclosed in the written report of the informant (P.W. 5) before the Officer-in-charge, Parasbigha Police Station, Jehanabad is that the marriage of informant's sister- Renu Devi was solemnized with the appellant -Buttan Sao, S/o late Dhigan Sao of village- Khaira, P.S. - Parasbigha, District - Jehanabad about eight years back. On 07.03.2012 at about 5.00 A.M. elder brother of the appellant Ramsagar Sao, who resides in Patna informed on mobile of the informant that his sister has died. Upon this information the informant along with others proceeded to village- Khaira to see his sister and upon arrival the informant saw that dead body of his sister was lying on the floor in her home. Upon enquiry the nephew (भगीना) of the informant - Ranjay Kumar (P.W. 6) told that in the night his father wrapped the metal wire used for spreading clothes in the neck of his mother and pushed her from the कोठी (roof) and his mother is lying on the floor since then his father has fled away. The informant further disclosed that his brother-in-law (appellant) used to drink liquor also and always used to demand money from the informant's side which was being



protested by the informant's sister. The informant asserted that due to protest by informant's sister his brother-in-law has killed his sister by strangulation.

3. The formal F.I.R. was registered on 07.03.2012 at 2.15 P.M. vide Parasbigha P.S. Case No. 10 of 2012 under Section 304(B) of the I.P.C. Upon investigation Police found the case true against the appellant and submitted charge sheet on 21.07.2012 and cognizance was taken of the offence by learned Chief Judicial Magistrate, Jehanabad on 07.08.2012. The case was committed to the court of Sessions on 28.09.2012 and charge was framed on 31.10.2012 against the sole appellant under Section 302 of the I.P.C.

4. To establish its case, the prosecution examined altogether seven witnesses. Out of which, P.W. 5 (Sanoj Sao) is the informant as well as brother of the deceased -Renu Devi. P.W. 4 (Dr. Muhammad Ali) is the doctor who conducted post mortem examination on the dead body of the deceased. P.W. 6 (Ranjay) is the son of deceased, aged about five years and also eyewitness of the occurrence. P.W. 7 (Samrat Singh) is the Investigating Officer of the case. P.W. 1 (Shivnath Paswan), P.W. 2 (Shivendra Kumar) and P.W. 3



(Bacchu Raut) are residents of village -Khaira i.e. the village of the appellant where the murder had taken place but have been declared hostile by the prosecution and as such no reliance can be placed on their evidence.

5. After recording the evidence of all the prosecution witnesses all the incriminating circumstances and evidences collected during the investigation was explained to the appellant and his statement under Section 313 of the Cr.P.C. was recorded who in his defence stated that he has been falsely implicated and his son has deposed at the instance of नानी (maternal grandmother).

6. Mr. Uday Bhanu Roy, learned counsel, assisted by Ms. Manisha Prakash, learned counsel for the appellant after placing the evidence, both documentary as well as oral, available on record, submitted that there is no eye witness to the occurrence except P.W. 6, who is a five year old boy of the deceased and no reliance can be placed upon child witness. He further submitted that informant (P.W. 5) is not an eye witness and the only eye witness i.e. P.W. 6 was tutored by his नानी (maternal grandmother). नानी (maternal grandmother) has not been examined and there is no corroboration of the statement



of P.W. 6 by any other independent witness. **He has further relied upon a judgment reported in 1995 Supp (4) Supreme Court Cases 416 [Arbind Singh Versus STATE OF BIHAR].** Relying on paragraph 3 of the judgment submitted that precaution should be taken while relying on child witness and without corroboration by another independent witness it is unsafe to convict an accused only on the basis of evidence of child witness. Accordingly learned counsel for the appellant submitted that prosecution has failed to prove the charges levelled against the appellant beyond all reasonable doubts and the judgment of conviction and sentence passed against the appellant is fit to be set aside. On the other hand Mr. Ajay Mishra, learned Additional Public Prosecutor has submitted that prosecution has proved the charges beyond all doubts inasmuch as P.W. 6 (son of the deceased) has said that his mother was killed by his father in the night at about 12.00 and he has vividly explained the circumstances. In the night at about 12.00 if an occurrence takes place at home where husband, wife and children are there, it is difficult to find any independent witness. The child witness is of average intellect and he disclosed the facts to his



maternal uncle (Mama) immediately after the occurrence which has been made the basis of the written information given to Police. This appears to be the earliest version by way of written report by the informant based upon the information provided by P.W. 6 which may not be discarded lightly. Accordingly he submitted that the learned trial court has rightly passed the order of conviction and sentence against the appellant on the basis of material available on record.

7. After having heard learned counsel for the parties and after going through the evidence, both oral as well as documentary, available on record, we are *prima facie* of the view that prosecution has proved the charges against the appellant beyond all reasonable doubts. Now before giving our conclusive finding we will examine the evidence on record closely.

8. P.W. 5, who is the informant and brother of the deceased, in his deposition has stated that he is the informant of the case and has proved the written report, which has been marked as Ext. 2. In paragraph 2 of his deposition he stated that suddenly at 5.00 O' Clock in the morning the elder brother of his brother-in-law (appellant – Buttan Sao) namely



Sagar Sao informed him on mobile that your sister -Renu Devi has died. Upon this information this witness along with his mother -Chinta Devi, uncle (Madan Sao), aunt (Ramawati Devi) proceeded to the matrimonial home of his sister in village- Khaira where his nephew (भगिना) Ranjay Kumar -P.W. 6 and niece (भगिनी) - Neha Kumari, aged about 3 years and 10 years respectively were crying sitting at the main door of the house. Nephew (भगिना) of this witness told that his father after wrapping iron wire around the neck of his mother pushed her from the कोठी (roof) meant to keep grains. The witness further said that he informed the Police and Police after arrival prepared inquest report and sent the dead body of informant's sister for post mortem examination. In paragraph 3 of his deposition the witness stated that the iron wire used in the occurrence which looked like aluminium of about 05 feet was seized by the Police and seizure list was prepared on which this witness had signed. In his cross examination the witness has said that he has not seen the occurrence and stated that his nephew (भगिना) told this witness about the occurrence and at that moment other persons of village- Khaira along with Daroga Ji was present. The witness has denied the



suggestion that he had wrongly said that his nephew explained about the occurrence to him.

9. P.W. 6 is the son of appellant as well as deceased, who at the time of deposition was 05 years old and was studying in Anganbari School. The learned trial court has undertaken the '*voir dire*' of the child witness before recording his evidence who was minor. During recording the evidence the court found that child was of general intellect and did not know about oath and as such his deposition was recorded without putting the witness on oath. In his deposition the son of deceased who is the only eye witness has said that name of his mother is Renu Devi and she died on the day of Holi. He further stated that his father after wrapping iron wire meant for spreading clothes around the neck of his mother pushed her from the कोठी meant for keeping grains and killed his mother by strangulation. He further stated that last rites of his mother was performed in the village -Khaira. In his cross examination the witness has stated that he was residing in the house of his नानी (maternal grandmother) since the death of his mother. He further stated that his नानी had informed him to say all these facts in the court.



10. P.W. 4 (Dr. Muhammad Ali) was posted at Sadar Hospital, Jehanabad as Medical Officer on 07.03.2012 and on that day at about 1.00 P.M. he performed post mortem examination on the dead body of the deceased -Renu Devi, W/o Buttan Sao (appellant). After post mortem examination the doctor found the following anti mortem injuries:

“1- Bluish – Black coloured ligature mark of 1/3” width seen around the neck about ¾ of its circumference at the level of thyroid cartilage.

2. Sub conjunctival haemorrhage of both eyes present.

3. Tongue was protruded

On dissection

Brain – Meninges were congested.

Heart – All the chambers were full of blood.

Lungs- Congested.

Stomach – Semi digested contents were present.

Spleen, Liver and Kidney were congested.

Fracture of thyroid cartilage was present.

Cause of death – Asphyxia caused by the ligature around the neck leading to cardio vascular failure and death.

Time since death- within twelve hours.

2. Fracture of thyroid cartilage of neck is sufficient to cause asphyxia and death.”

11. The doctor has mentioned the cause of death as asphyxia caused by ligature around the neck leading to cardio vascular failure and death. Time since death has been recorded by the doctor in the post mortem examination report as within 12 hours. Post mortem examination report has been proved by this witness and marked as Ext. 1.



12. From close scrutiny of medical as well as oral evidence it is evident that oral evidence is corroborated by medical evidence and in the cross examination of the material witnesses nothing adverse could be extracted by the defence side.

13. P.W. 7 (Samrat Singh) is the Investigating Officer of the case who was posted as Officer-in-charge of Parasbigha Police Station and he in his statement has said that on 07.03.2012 he had registered the case on the basis of written information given by - Sanoj Sao i.e. P.W. 5. He has proved the endorsement on the F.I.R. which has been marked as Ext. 3 and formal F.I.R. has been marked as Ext. 4. This witness in paragraph 2 has stated that he recorded re-statement of the informant. At that point of time the son of the appellant -Ranjay was also present and told this witness about the occurrence but the Investigating Officer did not record his statement and thought that he would record his statement later on. The informant had reiterated his earlier version in the re-statement and in paragraph 3 of his deposition this witness has explained the place of occurrence. In paragraph 4 this witness has stated that he recorded the statement of independent



witnesses namely Shivendra Kumar (P.W. 2), Bacchu Raut (P.W. 3) and Shivnath Paswan (P.W. 1) who had told this witness that the occurrence was true. In his cross examination this witness has stated that in sub para 3 of paragraph 32 of the case diary there was a direction to record the statement of Ranjay Kumar P.W. 6 (son of the deceased) but this witness did not take notice of the same. This witness further stated that he did not record statement of any eye witness.

14. Upon careful scrutiny of oral as well as documentary evidence available on record we are of considered opinion that prosecution has been able to prove the charges levelled against the appellant beyond all reasonable doubts inasmuch as the child witness was of average intellect and was studying in Anganbari school. He vividly explained the occurrence to his uncle (Mama) soon after the occurrence took place before his eyes and the informant (brother of the deceased) lodged the written report immediately after arriving at the place of occurrence upon getting information about the death of his sister which was based upon the information given by his nephew (भगिना) about the occurrence. We have not found any inconsistency in the statement of the informant



as well as statement given by minor child witness and submission made by learned counsel for the appellant that child witness was tutored witness by his नानी can not be accepted in as much as नानी had only told the child witness to explain the facts before the court which is quite natural when a child who has been residing at his Nani's place since death of his mother and when he is called in the court to depose, in all likelihood then the guardian will advise the child to explain the facts in court. So far reliance placed by learned counsel for the appellant on the judgment i.e. Arvind Singh Case (Supra) is concerned, in our opinion the facts of that judgment is not applicable in the facts and circumstances of the present case in as much as in the present case earliest version has been recorded based upon information provided by the child witness to the informant, who is maternal uncle (Mama) of the child witness and after two years when the statement of this child witness (P.W. 6) has been recorded he has explained the same story which he had seen in the night of the date and time of occurrence.

15. We have also seen that the appellant after the occurrence had fled away from his house and was not present



when the informant (P.W. 5) and Police arrived at the place of occurrence. When Police arrived at the place of occurrence the accused -appellant was absconding and ultimately he was arrested much after the date of occurrence on 12.07.2012.

16. Section 106 of the Evidence Act says:

“106. Burden of proving fact especially within knowledge.- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

It is necessary to appreciate that on the fateful night apart from the victim, the children and the accused were in the house. Thus what happened on that night and what led to the deceased death would be wholly within the personal and special knowledge of the accused – appellant but accused kept mum on this aspect. It is true that burden is on the prosecution to prove the case beyond reasonable doubt but when the prosecution has discharged the initial / *prima facie* burden, it shifts upon the accused to explain the circumstances which led to death of the victim on the fateful night inasmuch as the husband was residing in the dwelling house and it was within the personal knowledge of the accused- appellant who was present in the house on that fateful night. It could have been revealed by him to disapprove the prosecution case. The



informant on the basis of information provided to him by his nephew (भगिना) gave written statement to the Police who recorded the *fardbyan* at the dwelling house of the accused – appellant but the accused -appellant was conspicuously absent all along and was absconding and subsequently arrested by Police much after the date of occurrence on 12.07.2012. The informant (P.W. 5) was cross -examined by the defence but nothing adverse could be extracted from this witness. The evidence of this witness can be safely relied upon by us. Hon'ble Supreme Court in a judgment reported in **(2006) 12 Supreme Court Cases 254 (STATE OF RAJASTHAN Versus KASHI RAM)** in paragraphs 17, 22, 23, 24 has held that failure of accused to explain the incriminating circumstances against him which was within his special knowledge, amounts to failure to discharge the onus which lies on the accused under Section 106 of the Evidence Act. The failure on the part of the accused itself provides an additional link in the chain of circumstances proved against him. The above mentioned paragraphs are quoted hereinbelow for ready reference:-

“17. We have been taken through the entire evidence on record. The medical evidence



on record clearly proves that the death of Kalawati and her two minor daughters was homicidal caused by strangulation. The cause of death was asphyxia. It is also established on record that the deceased was last seen alive in the company of the respondent on 3-2-1998 at her house. The prosecution has also successfully established the fact that the house was found locked on the morning of 4-2-1998 and continued to remain locked till it was opened after removing the door on 6-2-1998. Throughout this period the respondent was not to be seen and he was arrested only on 17.2.1998. Neither at the time of his arrest, nor in the course of investigation, nor before the court, has the respondent given any explanation in defence. He has not even furnished any explanation as to where he was between 4-2-1998 and 17-2-1998. It has been argued on behalf of the prosecution that this most important circumstance has been completely ignored by the High Court. The case of the prosecution substantially rested on this circumstance. The respondent was obliged to furnish some explanation in defence. He could have explained where he was during this period, or he could have furnished any other explanation to prove his innocence. Counsel for the respondent on the other hand, contends that though the respondent furnished no explanation whatsoever, there is evidence on record to prove that he had gone to attend Suratgarh fair with his family members. A question, therefore, arises whether the presumption under Section 106 of the Evidence Act may be drawn against the respondent in the facts of the case, since the facts as to where he was during the relevant period and when he parted company with the deceased, were matters within his special knowledge the burden of proving which was cast upon him by law.

22. In *Sahadevan v. State* the prosecution established the fact that the deceased was seen in the company of the appellants from the morning of 5-3-1985 till at least 5 p.m. on that day when he was brought to his house, and thereafter his dead body was found in the morning of 6-3-1985. In the background of such facts the Court observed: (SCC p. 543, para 19)

“Therefore, it has become obligatory on the appellants to satisfy the court as to how, where and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person



with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313 Cr.P.C. they have not taken any specific stand whatsoever.”

23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in *Naina Mohd. AIR 1960 Mad 218: 1960 Cri LJ 620*

24. There is considerable force in the argument of counsel for the State that in the facts of this case as well it should be held that the respondent having been seen last with the deceased, the burden was upon him to prove what happened thereafter, since those facts were within his special knowledge. Since, the respondent failed to do so, it must be held that he failed to discharge the burden cast upon him by Section 106 of the Evidence Act. This circumstance, therefore, provides the missing link in the chain of circumstances which prove his guilt beyond reasonable doubt.”



17. In an another judgment on Section 106 of the Evidence Act reported in **(2006) 10 Supreme Court Cases 681 TRIMUKH MAROTI KIRKAN *Versus* STATE OF MAHARASHTRA** the Hon'ble Supreme Court while dealing with Section 106 of the Evidence Act and circumstantial evidence in paragraphs 12, 13, 14, 15, 21 and 22 has held that in a case based on circumstantial evidence where no eyewitness account is available there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. In paragraph 22 the Supreme Court has further held that **“where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received**



injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime". Above mentioned paragraphs are quoted hereinbelow:-

“12. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.

13. The demand for dowry or money from the parents of the bride has shown a phenomenal increase in the last few years. Cases are frequently coming before the courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in court as they want to keep aloof and do not want to antagonise a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished.

14. If an offence takes place inside the privacy of a house and in such circumstances where



the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This



view has been taken in a catena of decisions of this court.

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of H.P.* (1972) 2 SCC 80 : 1972 SCC (Cri.) 635: AIR 1972 SC 2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with “khukhri” and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal v. State of Maharashtra* (1992) 3 SCC 106 : 1993 SCC (Cri.) 435 the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P. v. Dr. Ravindra Prakash Mittal* (1992) 3 SCC 300 : 1992 SCC (Cri.) 642 : AIR 1992 SC 2045 the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill- treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In *State of*



T.N. v. Rajendran (1999) 8 SCC 679 : 2000 SCC (Cri.) 40 the wife was found dead in a hut which had caught fire. The evidence showed that accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.”

18. In the present case statement of child witness as well as the informant are corroborated by medical evidence inasmuch as cause of death has been opined by the doctor as *asphyxia* caused by ligature around the neck leading to cardiovascular failure and death. The evidence of P.W. 5 i.e. informant is admissible under Section 60 of the Evidence Act, who got information about murder of his sister from his nephew भगिना and on the basis of that information his *fardbyan* was recorded by the Police on 07.03.2012 at 2.15 Hours.

19. Section 60 of the Evidence Act lays down that oral evidence must be direct if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it. P.W. 5 was cross -examined about the truth of his information and nothing adverse could be extracted by the



defence side. Thus the evidence of P.W. 5 is reliable and can safely be relied upon by us.

20. In view of evidence on record particularly the circumstance which goes against the appellant there is no reason to consider the case of prosecution as doubtful. In view of the facts and circumstances as discussed hereinabove we do not find any error in the judgment of conviction and sentence. Accordingly judgment of conviction dated 07.09.2013 and sentence dated 10.09.2013 passed by Sri Gopal Prasad, learned In-charge Addl. Sessions Judge 4th, Jehanabad in Sessions Trial No. 578 of 2012 [arising out of Parasbigha P.S. Case No. 10 of 2012] is hereby approved and the appeal stands dismissed.

(Rakesh Kumar, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	AFR
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