

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.759 of 2013**

Arising Out of PS. Case No.-43 Year-2011 Thana- AGIAON BAZAR District- Bhojpur

=====

Bindesh Pandey, son of Ram Darash Pandey, resident of Village- Khama  
Dihra, Police Station - Agion Bazar, District - Bhojpur at Arrah

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

**Appearance :**

For the Appellant/s : Sri Kanhaiya Prasad Singh, Sr. Advocate

Sri Arvind Kumar Pradhan, Advocate

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

=====

**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**  
**and**  
**HONOURABLE MR. JUSTICE PRAKASH CHANDRA**  
**JAISWAL**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)**

**Date : 18-02-2019**

1. The sole appellant was convicted and sentenced in Sessions Trial No. 10 of 2012. Thereafter, he preferred the present Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 ( hereinafter referred to as the “Cr.P.C.”). The appellant by judgment dated- 16.07.2013 was convicted for commission of offence under Section 302 of the Indian Penal Code, 1860 ( hereinafter referred to as the “I.P.C.”) and by order dated:



20.07.2013 he has been sentenced to undergo imprisonment for life and to pay a fine of Rs. 20,000/-. In case of default in payment of fine he has been directed to further undergo simple imprisonment for one year. The appellant was tried and convicted by learned Sri Jitendra Nath Singh, learned Adhoc Additional Sessions Judge - VI , Ara, Bhojpur in Sessions Trial No. 10 of 2012 (arising out of Agion Bazar P.S. Case No. 43 of 2011 corresponding to G.R. No. 2660 of 2011).

2. Short fact of the case is that on 24.08.2011 at 6.15 Hours Sub Inspector of Police Sri Manoj Kumar Shrivastava, S.H.O. Agion Bazar P.S. (P.W. 8) recorded fardbyan of Kanchan Kumari (P.W. 6). The informant gave her fardbyan on her roof near the dead body of her mother – Bimla Devi in presence of her maternal grand father -Baijanath Pandey ( P.W. 2) and maternal uncle – Raju Pandey (P.W. 3). She stated that her father was employed in a factory in Himachal Pradesh where he was doing the work of labourer and on previous day he had gone to his work place i.e. Himachal Pradesh from his village. In the same night i.e. in preceding night of 23.08.2011 at 10.00 P.M. after taking meal, since it was Summer, as usual she along with her mother- Bimla Devi (deceased) and her younger brother -Vishal, aged about 4 years, went on roof for sleeping. In the night suddenly she heard



the cry of her mother – Bimla Devi and she awoke and saw that one person was caught by her mother and after getting free he started fleeing away towards Eastern side of the roof and her mother in injured condition fell down and started squirming. In the flash of torch light she identified the person who was fleeing away. The said accused was her co-villager: Bindesh Pandey, aged about 24 years. She stated that Bindesh Pandey after crossing her roof jumped on her pattidar's roof namely – Bhagsarna Kunwar and from there he fled away. While he was fleeing away he left his blue colour small torch on the roof of informant. After alarm being raised by the informant, from the Southern side of her roof her pattidars i.e. cousin uncle – Krishna Nand Pandey (P.W. 5) and Ram Narain Pandey (P.W. 4) and also aunt arrived. The informant further stated that her mother died while speaking that बिन्देशवर मारले बा [Bindeshwar had assaulted her]. The occurrence had taken place at about 11.45 P.M. After some time through mobile she gave information about the occurrence to her maternal grand father (P.W. 2) and maternal uncle (P.W. 3) who were resident of Hat Pokhar. After getting information they reached the village of the informant in the same night. The informant further stated that Bindesh Pandey (appellant) earlier at about one year back had stolen buffalo from the door of her uncle- Ram Narain Pandey



(P.W. 4) but no case was instituted against him since he was by nature criminal. The informant claimed that Bindesh Pandey – appellant of same village i.e. Khambha Dihara, Police Station -Agion Bazar, District – Bhojpur for committing crime with ill intention had come to her roof who was identified and on being opposed he had killed her mother. The fardbyan was read over to her and after finding it correct she put her signature in presence of two witnesses namely: Baijnath Pandey (P.W. 2) and Raju Pandey ( P.W. 3).

3. On the basis of the said fardbyan on the same day i.e. on 24.08.2011 at 12.15 P.M. a formal F.I.R. vide Agion Bazar P.S. Case No. 43 of 2011 was registered for offence under Section 302 of the I.P.C. against the sole appellant. During investigation accusation was found true, and as such, on 19.10.2011 charge-sheet was submitted against appellant and on the same day learned Chief Judicial Magistrate, Ara took cognizance of offence. Thereafter, the case was committed to the court of Sessions on 04.01.2012 and it was numbered as Sessions Trial No. 10 of 2012. On 23.07.2012 charge under Section 302 of the I.P.C. was framed against the appellant and to prove its case on behalf of prosecution altogether eight witnesses were examined. Out of eight witnesses, P.W. 1 – Chand Govind Pandey, P.W. 2 ( Baijnath Pandey), P.W. 3



- Raju Pandey, P.W. 4 – Ram Narain Pandey, P.W. 5 – Krishna Nand Pandey are hearsay witnesses, who were informed by P.W. 6 – Kanchan Kumari ( informant) regarding the occurrence as well as the name of culprit. Beside this, P.W. 1 stood witness to seizure list in respect of recovery of blood stained knife, which was used in the crime, and it was marked as Ext. 1. He also put signature on seizure list in relation to dry blood obtained from the place of occurrence, which was marked as Ext. 1/1. P.W. 2 – Baijnath Pandey is witness to the fardbyan and his signature was marked as Ext. 2 and he also proved the signature of Raju Pandey on the fardbyan, which was marked as Ext. 2/1. Raju Pandey (P.W. 3) had proved his signature on the seizure list which was in relation to seizure of plastic torch of the appellant which was marked as Ext. 3. P.W. 5 (Krishna Nand Pandey) is another witness to the seizure list relating to torch, broken bangle and broken thread and his signature was marked as Ext. 3/1. Informant – Kanchan Kumari in the case was examined as P.W. 6. Since the case is based primarily on solitary evidence of P.W. 6 it is necessary to discuss her evidence in detail.

4. P.W. 6 in her evidence has stated that occurrence had taken place on 23.08.2011 at 11.45 in the night. She, her mother and her younger brother - Vishal were sleeping on the roof



(terrace). On alarm being raised by her mother she awoke and saw that her mother had caught waist of the appellant. She flashed torch light then she saw that appellant was carrying a knife in his hand and he inflicted knife blow on her mother and fled away. The knife blow was given on the chest of her mother and her mother fell down and thereafter keeping her into her lap the informant started crying and raised alarm. Thereafter, her neighbours arrived there. Amongst them, there were - Krishna Pandey ( P.W. 5), Ram Narain Pandey – P.W. 4 , Chand Govind Pandey (P.W. 1) and Manju Devi (not examined). They enquired from the informant then informant explained that Bindesh Pandey – appellant had inflicted knife blow on her mother and fled away. The informant then telephonically informed her maternal uncle and requested him for coming immediately otherwise after killing her mother the accused Bindesh Pandey may kill her. She disclosed the name of her maternal uncle as Raju Pandey – P.W. 3. Thereafter, her maternal uncle and maternal grandfather with 2-3 other persons at about 4.00 in the morning arrived there and she narrated the entire occurrence to them particularly the fact that Bindesh had given knife blow. At about 4.00 A.M. Darogaji arrived and recorded her fardbyan which was explained to her and thereafter she put her signature. Her signature on the fardbyan was marked as Ext. 4. She



further deposed that as the accused fled away he left his blue colour torch. In court also she identified the appellant. This witness was cross examined at length however nothing could be extracted to create doubt on her evidence. In her evidence she categorically stated that after the occurrence when P.W. 1 – Chand Govind Pandey, P.W. 4 (Ram Narain Pandey) and P.W. 5 (Krishna Nand Pandey) arrived she categorically narrated the same story to them. Similarly, P.W. 6 – Kanchan Kumari had stated that on telephone she had given entire information to P.W. 2- Baijnath Pandey and P.W. 3 – Raju Pandey. During evidence all those witnesses have categorically stated that they were given description of the occurrence by the informant- P.W. 6. Of -course in the evidence of P.W. 1 – Chand Govind Pandey some fact has come which he had not stated during investigation before the Investigating Officer but deviations are not enough to see his evidence with any doubt.

5. P.W. 7 (Dr. Kalim Ahmad ) on 24.08.2011 was posted as Medical Officer in Sadar hospital, Arrah and on the same day at 10.50 A.M. he conducted post -mortem examination on the dead body of the deceased and found the following facts:-

“External finding

(a) sharp incised penetrating wound at thoracic cavity 2”x1/4” over the left breast.

(b) lacerated wound over perirectal region left upper eye brown.



(iii) abraisson present over chin 2"x1"

IV dry blood present over left side nose.

On dissection

Whole skull cavity intact menses pale and congested.

Chest – Opening the chest blood present inside the chest cavity. Lacerated wound between II<sup>nd</sup> and III<sup>rd</sup> rib lacerated at lung anteriorly. Right side lung pale. Deep lacerated wound present at left ventricle of the heart heart pale and empty.

Abdomen- whole viscera pale and congested stomach contains approx 20 ml undigested food materials.

Liver, Spleen, kidney congested and pale.

Urinary bladder contain 10 ml overdual urine.

Cause of death in my opinion due to penetrating injuries in lungs and heart bleeding haemorrhage shock deaths"

This witness also proved the post – mortem examination report which was marked as Ext. 5.

6. P.W. 8 (Manoj Kumar Srivastava) was Investigating Officer of the case and on 24.8.2011 he was posted as Officer- in-charge of Agion Bazar Police Station. In his evidence he stated that in the night of 23/24 August, 2011 on mobile he received information from one unknown that one lady was killed in village -Khambha Dihara. Thereafter, he rushed to the place of occurrence in the same morning and at 6.15 he recorded fardbyan of the informant. The fardbyan was proved as Ext. 6. Thereafter he prepared inquest report and dead body was sent for post mortem examination. He also proved formal F.I.R. which was marked as Ext. 7. At the place of occurrence he had found broken bangle of the deceased and dry blood for which a seizure list was prepared,



which was marked as Ext. 8. During investigation small black broken thread and blue small torch was found and seizure list was prepared and which was marked as Ext. 8. He also seized dry blood from the place of occurrence for which a seizure list was prepared and marked as Ext. 8/B. On the same day he arrested appellant from his house and in his evidence he stated that he recorded confessional statement of the appellant. In his confession he confessed the guilt. The confession of the appellant had led to recovery of knife which was used in the crime. The said blood stained knife was found near the door step of Bhagsarna Kunwar. The house of Bhagsarna Kunwar was adjacent to the house of the informant. The informant in her evidence has stated that appellant after jumping from the roof of the informant had fled away from the house of Bhagsarna Kunwar. During investigation the Investigating Officer had seized cloth i.e. petticoat of the deceased and after preparing seizure list he sent blood stained knife, cloth of the deceased and dry blood found at the place of occurrence for its chemical examination to Forensic Science Laboratory and thereafter report was received. Material exhibits were also produced during the trial. The knife was got exhibited as material exhibit no. I, dry blood was marked as material exhibit no. II and petticoat of the deceased was marked as material exhibit no. III. In



the chemical report and serological report blood found on the knife was found as blood of human being. The Investigating Officer in his evidence has clarified that after recording fardbyan he had sent fardbyan to Police Station which was about 6 K.M. away from the place of occurrence. He returned back to Police Station on the same day at about 2-3 P.M. and he noticed that though F.I.R. was lodged it was not sent to Court. However on the next day the F.I.R. was sent to Court. The Court from the Police Station was about 60-62 K.M. away. The Investigating Officer has described in his evidence about the place of occurrence and after finding the case true he had submitted charge-sheet with approval of senior officials. After closure of prosecution evidence incriminating circumstances and evidences were explained to appellant and thereafter his statement under Section 313 of the Cr.P.C. was recorded. The learned trial judge after being fully satisfied that prosecution had proved its case beyond all reasonable doubts has passed the impugned judgment of conviction and sentence.

7. Sri Kanhaiya Prasad Singh, learned senior counsel, assisted by Sri Arvind Kumar Pradhan, learned counsel for appellant after referring to entire evidence has argued that prosecution has not been able to establish its case beyond all reasonable doubts. He submits that after going through entire



evidence it is established that the case is based on solitary evidence of P.W. 6 who has come forward as only eye witness to the occurrence. He submits that since the case is based on solitary evidence this Court is required to test the evidence of P.W. 6 as whether it is truthful or not. According to Sri Singh the evidence of P.W. 6 may not be relied upon particularly in view of the fact that in the evidence of P.W. 6 she has stated that she along with deceased and her younger brother was sleeping on roof under mosquito net however the Investigating Officer in paragraph no. 6 of his cross- examination has stated that at the place of occurrence he had not noticed any bed or bed sheet. He submits that non-finding of any such material creates some doubt regarding evidence of P.W. 6 and genesis of the case appears to be doubtful. He submits that it appears that since the appellant, as alleged had stolen buffalo of uncle of informant one year back, there is possibility that in case of non identification of any other person the informant might had named the appellant as the main accused. He submits that there is possibility of false implication of the appellant. He further submits that evidence of informant- P.W. 6 may not be relied upon since she had developed prosecution story from the story described in her fardbyan. He submits that in the fardbyan the informant -P.W. 6 stated that she saw the appellant



fleeing away, however, in her evidence she has come out with a case that after hearing cry of her mother she woke up and saw that appellant was caught by her mother and she had caught the appellant by waist. This suggests that the story was developed by the informant which may not be relied upon.

8. It has also been argued that informant in her evidence has claimed to identify the appellant in torch light however during trial source of identification has not been brought on record. The said torch was not produced by the informant nor the Investigating Officer in his evidence has whispered about the torch which was used by the informant for identification of appellant. According to Sri Singh, learned senior counsel, the information given to husband of the deceased much belatedly also creates some doubt. By way of referring to evidence of P.W. 6 he submits that informant herself has stated that her father was informed after four days after the alleged occurrence. According to Sri Singh this act appears to be not natural. He further submits that in the evidence of Investigating Officer it has come that in the morning of the date of occurrence at about 11.00 P.M. the appellant was arrested from his house. According to Sri Singh in normal course after committing murder there was no possibility for the appellant to remain present in his house. He would have fled away but his



arrest from his house makes it clear that appellant was not at all aware regarding the occurrence and this was the reason that he was easily arrested from his house. Lastly it has been argued that appellant was not questioned with incriminating circumstances and evidences at the time of recording his statement under Section 313 of the Cr.P.C. which vitiates the entire proceeding. On aforesaid grounds it has been argued that it is a fit case in which this court may interfere with the judgment of conviction and sentence.

9. Sri Ajay Mishra, learned Additional Public Prosecutor opposing the Appeal has argued that the evidence of P.W. 6 may not be considered as doubtful. Right from the very beginning the informant has stated that after seeing the occurrence she started crying and raised alarm and thereafter neighbours immediately arrived and she narrated entire story to neighbours who were related with the informant. Those persons have come forward to depose in the case as P.W. 1, P.W. 4 and P.W. 5. Those witnesses have stated that while immediately after the occurrence they came to the place of occurrence the informant narrated entire story and she stated that appellant in her presence had inflicted injuries upon her mother by giving knife blow whereby her mother died. He submits that those witnesses have been examined as hearsay witness which has been corroborated by the evidence of



informant- P.W. 6. Similarly, P.W. 2 and P.W. 3 who were maternal grand father and maternal uncle respectively of the informant have stated that on telephone they were informed regarding the occurrence thereafter they rushed from their village which is village - Hat Pokhar which was about 25 K.M. away. They rushed to the place of occurrence. They reached the village of the informant at about 4.00 A.M. in morning. Those witnesses P.W. 2 and P.W. 3 have categorically deposed that how after getting information they hired a vehicle and thereafter they immediately rushed to the place of occurrence and even after arrival they were informed by the informant regarding the occurrence. So evidence of P.W. 2 and P.W. 3 also supports the evidence of P.W. 6 – informant. Sri Ajay Mishra, learned A.P.P. has further argued that it is not only a case of identifying the appellant by the informant rather the case is based on oral dying declaration. He submits that in the fardbyan as well as in her evidence P.W. 6 is categorical on the point that her mother just before her death while crying had said that बिन्देशवर मारले बा [appellant had assaulted her]. According to Sri Mishra, learned A.P.P. evidence of P.W. 6 supported with the evidence of P.Ws. 1 to 5 is sufficient to prove that prosecution has established its case beyond all reasonable doubts and thereafter



the learned trial judge has passed the judgment of conviction and sentence.

10. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record. We have already discussed the evidence of P.W. 6. In her evidence she in categorical term has stated as to how she awoke after hearing cry of her mother and then she flashed torch and identified the appellant. So far submission of Sri Kanhaiya Prasad Singh, learned senior counsel that in case of non- production of source of identification evidence may not be relied upon, we are of opinion that such material / point is primarily required to be examined in a case in which accused persons are not known to prosecution side. In the present case it is not in dispute that appellant is close neighbour of the informant. In such situation even had the informant not claimed to identify the appellant in torch light, only on seeing feature of the appellant was enough to prove the identification since both were neighbourer. Moreover, the deceased before her death in presence of informant had said that this appellant had assaulted her immediately thereafter she fell down and started squirming and subsequently she died. The informant has stated as to how the appellant jumped the roof and fled away through the roof of her neighbour- Bhagsarna Kunwar. The



Investigating Officer after the occurrence while investigating the case had found the used blood stained knife which was sent to F.S.L. It is true that the confessional statement recorded by Police was not got exhibited but the Investigating Officer in his evidence has stated that he had recorded confessional statement of the appellant which led to recovery of knife. Even though said confession may not be taken into account but fact remains that the knife was found nearer the foot step of the door of the neighbour i.e. the place from where the appellant had fled away. P.W. 6 was cross -examined at length but after going through the entire evidence we do not find anything which can be termed as doubtful. So far submission of Sri Singh, learned senior counsel that the Investigating Officer has not whispered about the bed or bed sheet at the place of occurrence is concerned, there can be many reasons for non -finding of such material. Even the Investigating Officer was not asked during his cross- examination as to whether he had noticed those things or not. However it was submitted by Sri Singh that on examination of entire evidence of P.W. 8 it appears that Investigating Officer had not whispered about those things but fact remains that occurrence had taken place at about 11.45 P.M. and Police arrived on or after 4.00 in morning. So in such situation merely on non finding of bed or bed sheet at the place of



occurrence may not create any doubt on the prosecution case. The Investigating Officer (P.W. 8) has minutely investigated the case and collecting entire evidence had submitted charge sheet. On going through the evidence of P.W. 8 itself it is evident that Investigating Officer has done his job in a very scientific manner. So far submission of learned senior counsel that entire circumstances were not explained to accused – appellant at the stage of recording statement under Section 313 of the Cr.P.C. is concerned, it is true that evidence in detail was not explained to him but on going through the statement of appellant recorded under Section 313 of the Cr.P.C. we are of opinion that in sum and substance material was explained to him, and as such, only on such technicality in a case which is otherwise reliable the appellant may not get any benefit.

11. On examination of entire evidence, we are of considered opinion that learned trial judge has committed no error in passing the judgment of conviction and sentence, and as such, we do not find any ground for interference with the judgment of conviction and sentence. Accordingly judgment of conviction dated: 16.07.2013 and sentence dated- 20.07.2013 passed by Sri Jitendra Nath Singh, learned Adhoc Additional Sessions Judge -VI, Ara, Bhojpur in Sessions Trial No. 10 of 2012 arising out of Agion



Bazar P.S. Case No. 43 of 2011 corresponding to G.R. No. 2660 of 2011 is hereby approved.

12. The Appeal stands dismissed.

**(Rakesh Kumar, J)**

**( Prakash Chandra Jaiswal, J)**

praful/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | AFR        |
| CAV DATE          | NA         |
| Uploading Date    | 23-02-2019 |
| Transmission Date | 23-02-2019 |

