

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.215 of 2014**

Arising Out of PS. Case No.-63 Year-2012 Thana- KORHA District- Katihar

Kailash Kewat, son of Late Krishna Chandra Kewat, resident of village-
Chhotaki Ratnai, Police Station- Dandkhora, District- Katihar.

... .. Appellant

Versus

The State Of Bihar

... .. Opposite Party

Appearance :

For the Appellant	:	Shri Rajendra Prasad Sah, Advocate Shri Ratnakar Ambashtha, Advocate Shri Sanjeev Kumar Singh, Advocate Shri P.K. Jaipuriyar, Advocate Shri Anshuman Jaipuriyar, Advocate Ms. Anukriti Jaipuriyar, Advocate For the Opposite Party/State: Shri Ajay Mishra, A.P.P.
-------------------	---	--

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 28-08-2019

1. The appellant was arrayed as accused for murdering his father and he was convicted and sentenced by the learned trial judge. The judgment of conviction and sentence is only in six pages. After conviction and sentence the appellant 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 03.02.2014 was 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 11.02.2014 he was sentenced to undergo imprisonment for life. The judgment of conviction and sentence was passed by Shri Vidyadhar Prasad Panday, learned Additional District & Sessions Judge- I, Katihar [hereinafter referred to as the “trial judge”] in Sessions Trial No. 488 of 2012 (arising out of Dandkhora P.S. Case No. 63 of 2012). Surprisingly in the present case informant is the own brother of the deceased and own uncle of the appellant.

2. The case was initiated on the basis of the written report, which was not formally got proved during the trial, addressed to the Officer-in-charge, Dandkhora Police Station. The written report bears the signature of the informant - Mahendra Kewat (P.W. 7). In the written report it was disclosed that informant - Mahendra Kewat, Son of Late Lila Kewat, was a permanent resident of village- Chhotaki Ratnai, P.S. - Dandkhora, District – Katihar. The informant was having two other brothers, namely: Basudev Kewat (P.W.2), Krishna Chandra Kewat (deceased). In the written information it was further indicated that Krishna Chandra Kewat (deceased) was having only one son namely - Kailash Kewat (appellant). In between Krishna Chandra Kewat and Kailash



Kewat in the evening of 16.05.2012 at about 6.00 P.M. some altercation had taken place and on the said day Kailash Kewat had said that his father was in the habit of abusing his wife. On 17.05.2012 in the morning at 5.00 A.M. he heard *hulla* that in between Kailash Kewat and his father fight was going on. In the meanwhile, someone informed him that Kailash Kewat (appellant) through stone had smothered the face of his father. On hearing *hulla* the informant runningly went to the house of his brother and saw that face of his brother was completely damaged. On *hulla* other co-villagers also arrived there and said to carry the injured to hospital whereupon the informant on a bicycle came to *Saraiya* where he informed Ranjeet doctor (not examined), Chowikadar and Dafadar that his brother was seriously injured. Ranjeet doctor asked him to carry the injured to Sadar Hospital. In the written report it is further stated that when he brought a *tempo* and returned back, till that time the injured had already died. In the written information it was reiterated that nephew of the informant through stone had killed his brother and dead body of his brother was lying at the place of occurrence itself. After arrival in the Police Station he gave this information. The



written information was signed by the informant. On the basis of the said written information on the same day i.e. on 17.05.2012 at 11.30 A.M. a formal F.I.R. was drawn vide Dandkhora P.S. Case No. 63 of 2012 under Section 302 of the I.P.C. against the sole appellant. It was submitted by learned counsel for the appellant that appellant was arrested on the date of occurrence and the record suggests that he was produced on 18.05.2012. After registering F.I.R. Police prepared seizure list relating to seizure of the stone, inquest report was prepared and dead body was sent for post mortem examination. Police during investigation found the case true against the appellant and thereafter, on 31.05.2012 charge sheet was submitted against the sole appellant. On submission of charge sheet, on 27.06.2012 learned Chief Judicial Magistrate, Katihar took cognizance of the offence. After compliance of provision under Section 207 of the Cr.P.C. the case was committed to the court of Sessions on 04.08.2012 and thereafter, it was numbered as Sessions Trial No. 488 of 2012. After commitment, on 01.11.2012 charge under Section 302/201 of the I.P.C. was framed against the appellant, which he denied and claimed to be tried.



3. During the trial to establish its case on behalf of the prosecution altogether nine witnesses were examined. Out of nine witnesses, P.W. 2 (Basudev Kewat) is the brother of the deceased, P.W. 3 - Tetri Devi (wife of informant and *bhabhi* of deceased), P.W. 4 - Durgawati Devi (wife of P.W. 2 - Basudeo Kewat and *bhabhi* of deceased), P.W. 6 - Shambhu Kewat is son of informant (P.W. 7) and nephew of the deceased and Mahendra Kewat, own elder brother of the deceased (P.W. 7) were examined as witnesses as if after the occurrence they arrived at the place of occurrence and saw the appellant present at the place of occurrence. Out of them, P.W. 6 (Shambhu Kewat) has come forward as if at the time of occurrence after hearing sound (*hulla*) he reached at the place of occurrence and claimed to saw the occurrence. P.W. 5 (Sitaram Yadav) is the co-villager who in his evidence has stated that he was informed by P.W. 3 regarding the occurrence and involvement of the appellant. P.W. 8 - Dr. Tanvir Haider had conducted post mortem examination, whereas P.W. 9 - Dayakant Paswan is the Investigating Officer of the case, however, P.W. 1 (Ashok Yadav) who was a



co-villager and independent witness, since did not support the case was declared hostile.

4. After completion of prosecution evidence, on 07.08.2013 statement of appellant under Section 313 of the Cr.P.C. was recorded. On examination of the same it appears that it was complete violation of the statutory provision of Section 313 of the Cr.P.C. since no circumstances were explained to him.

5. After statement of the appellant was recorded under Section 313 of the Cr.P.C. one defence witness was examined i.e. D.W. 1 - Kunti Devi, who is non else but wife of the appellant and daughter- in- law of the deceased. In her evidence she has stated that Police had recorded her statement as well as statement of her husband, however during the evidence it has come that neither statement of D.W. 1 was recorded nor Police had recorded any statement of the appellant in his defence. Despite the fact that evidences which were brought on record were not at all sufficient for passing judgment of conviction and sentence, it is evident that the learned trial judge erroneously and in a mechanical manner



has passed the judgment of conviction and sentence, which has been assailed in the present appeal.

6. Shri Anshuman Jaipuriyar, learned counsel for the appellant after placing entire evidence on record has argued that it was out and out a case of false implication by the informant's side with a view to grab ancestral property of the appellant. He submits that circumstances suggest that informant's side were instrumental in eliminating the deceased who was father of the appellant and at the same time the appellant was made scapegoat and he was shown as if the appellant himself had murdered his own father. Learned counsel for the appellant by way of referring to evidences particularly evidence of P.W. 7 (informant) has argued that informant himself has admitted in his evidence that though partition in respect of ancestral property had taken place long back in which about 19 decimal of land was lying in possession of the deceased, who was none else but own brother of the informant (P.W. 7) and further stated that out of 19 decimal of land the informant was having 6 decimal land. Learned counsel for the appellant taking clue from the evidence of P.W. 7 has argued that it appears that no written



partition had taken place and with a view to prevent the appellant from claiming any share in the ancestral property in a well planned manner the informant's side got the father of the appellant eliminated and fixed him as culprit in the present case. It has been argued that the conduct of the Investigating Officer also shows that due to some erroneous consideration he had favoured the informant and in a case of false implication he forwarded the appellant as accused. He submits that the conduct of the Investigating Officer appears to be suspicious due to the reason that once father- in- law of the D.W. 1 was murdered in which case her husband was arrayed as accused, it was necessary on the part of the Investigating Officer to record the statement of the wife of the appellant under Section 161 of the Cr.P.C. The wife of appellant who was examined as D.W. 1 has categorically stated that Police had recorded her statement as well as statement of her husband but subsequently he did not bring those statement on record and this was the reason that wife of the appellant has come forward to be examined as defence witness. Shri Anshuman Jaipuriyar, learned counsel for the appellant further submits that it appears that the father of the appellant was



done to death at some another place and after killing, his dead body was laid on a cot lying on the *verandah*. To substantiate his submission he has argued that the Investigating Officer while inspecting the place of occurrence had not noticed any blood mark either on bed over which dead body was lying or on the ground any blood mark was noticed. Of course seizure of one stone used for crushing spices was shown, the said stone was also not shown having any blood mark. It is admitted case that the said seized stone was never sent to F.S.L. for its examination. According to learned counsel for the appellant the evidence of Investigating Officer does not establishes the place of occurrence, and as such, it is evident that appellant was falsely implicated by his own uncle i.e. P.W. 7 / Mahendra Kewat with a view to grab properties/ land. He has further argued that no substantial motive has been brought on record nor there was possibility of any motive on the part of the appellant to kill his father. Of course in the written information reason for the occurrence was explained as if the deceased (father of the appellant) was abusing his daughter -in- law i.e. wife of the appellant, and as such, reason which was explained by the informant appears to be simply



not believable. On aforesaid grounds it has been argued that judgment of conviction and sentence is liable to be set aside.

7. Shri Ajay Mishra, learned Additional Public Prosecutor though has opposed the appeal, was not in a position to defend the case of prosecution.

8. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record and after going through the same *prima facie* we are of opinion that it was a case of completely false implication. The circumstances which have been brought on record instead of showing involvement of the appellant, points out its finger to the prosecution side itself, however while hearing appeal it would not be appropriate for this court to record any such specific finding, which can be dealt with if direction is given for *de novo* investigation of the case.

9. Before proceeding further, it would be necessary to refer to evidence which has been brought on record. It was specific case, as per the written report, which is the basis of the F.I.R. that informant P.W. 7 had got information from “**someone**” regarding the occurrence and involvement of the appellant. However, at the time of evidence he has come out



with a specific case that in the morning while he was in his house his son (P.W. 6) came and informed that appellant was assaulting his own father i.e. (deceased) whereafter the informant with P.W. 6 went there and saw that father of the appellant was lying in badly injured condition on *verandah* and at that time he was having some breadth. In the written report he was specific on the point that thereafter carrying a bicycle he went to the doctor and informed *Chaukidar* and *Dafadar*. Subsequently, he brought a *tempo* for carrying injured to hospital but till that time injured had already succumbed to his injuries but during evidence he has stated that on the date of occurrence at 4.30 in the morning he was in his house. He was on his bed and about to rise then his son - Shambhu Kewat (P.W. 6) raised *hulla* and thereafter, this witness ran towards the house of his brother -Krishna Chandra Kewat (deceased) and saw that son of Krishna Chandra Kewat i.e. Kailash Kewat (appellant) after killing his father was standing there and also he noticed the stone used in the occurrence lying there. The deceased at that very time was having some breadth. His face was totally damaged and some pieces of teeth were lying there. In paragraph 2 of his



evidence he further stated that when he enquired from Kailash Kewat (appellant) as to why he killed his father, then he replied that his father was using filthy languages against his wife and this was the reason that he killed his father. As per this witness the appellant further stated to follow him for cremation of the dead body. Since the injured was having some breadth, for the purposes of his treatment he went to bring tempo and while he returned back he saw that the injured had already died, whereas, in the written report this witness had stated that after the occurrence he went to doctor Ranjeet and he also informed Dafadar and Chaukidar however without any explanation or reason, neither said doctor nor *Chaukidar* or *Dafadar* were examined as witnesses by the prosecution. This witness identified his signature on the written report, which was marked as Ext. 1. In paragraph 3 of his evidence he stated that subsequently he went to the Police Station and explained about the occurrence to the Police and Chota Babu (A.S.I.) had written the report and after writing the contents of the written report was explained to him and after finding it correct he put his signature at the bottom, which was marked as Ext. 1. In cross -examination in



paragraph 4 he stated that he was three brothers, namely: Basudev Kewat (P.W. 2), deceased - Krishna Chandra Kewat and he himself. Their father died about 35 years back. After his death partition had taken place. His father was having 8 bigha of land which was partitioned about 25-30 years back and thereafter, share was distributed amongst all the brothers. Homestead land measuring about 19 decimal was fallen in the share of his brother (deceased). He further stated that in the said 19 decimal land, he was having 6 decimal of land. Since after partition, 19 decimal land had already fallen in the share of the deceased, the claim of 6 decimal of land by this witness is itself sufficient to draw an inference that this witness was claiming share in the said land i.e. land of his deceased brother. In paragraph 5 of his cross -examination he further stated that deceased Krishna Chandra Kewat was having only one male issue, who was the appellant. Wife of Krishna Chandra Kewat (deceased) had deserted him about 25 years back. In-law's village of Krishna Chandra Kewat was Tesaniya village. In paragraph 6 of cross examination he further stated that Kailash (appellant) was residing with his maternal grand father. In paragraph 5 of his cross-



examination he further stated that in between the house of this witness i.e. P.W. 7 (Mahendra Kewat) and deceased -Krishna Chandra Kewat there was thatched partition [फूस का दाटी] however they were separate by metes and bounds. He further stated that deceased Krishna Chandra Kewat was having only one issue who was a son and his wife had already left him about 25 years back. He further stated in paragraph 6 of his cross -examination that Kailash Kewat (appellant) was initially residing in the house of his *Nana* which was in the village *Teraniya* and his brother -Krishna Chandra Kewat was residing alone in his house. About 06 months back Kailash Kewat started to live with his father and his brother was looking after his agricultural work. In paragraph 7 of his cross examination he further stated that appellant -Kailash Kewat was having only three daughters who were residing with their maternal grandfather (*Nana*). Initially, in paragraph 7 of his cross-examination he stated that he had seen Kailash (appellant) killing his father Krishna Chandra Kewat however, immediately he corrected that after killing his father, Kailash had put the stone on the ground then this witness arrived there. He further clarified in paragraph 7 of his cross-examination



that till arrival of the Police Kailash Kewat was present there and after being called by the Police he went to Police. On examination of the evidence of this witness it is established that he has tried to develop many facts from the facts disclosed in the written information. It is also clear that appellant even after murdering his father remained present there till arrival of Police and he himself appeared before the Police on being called. In normal course had it been a case that appellant had killed his father, certainly he would not have remained present at the same place and not volunteered his presence before the Police.

10. P.W. 6 – Shambhu Kewat in his evidence has come out with a case as if he firstly had witnessed the entire occurrence in which the appellant was killing his father. Then he informed P.W. 7 and others regarding the occurrence. Accordingly, evidence of this witness is required to be properly dealt with. In his evidence he stated that occurrence had taken place at about 4.00 in the morning on 17.05.2012. He was on his bed. Then he saw Kailash Kewat (appellant) was assaulting Krishna Chandra Kewat through stone meant for crushing spices. Then he said that after hearing sound



which was coming from the house of Krishna Chandra Kewat he came out and went there and from the whole of thatched partition [ढाँटी] he saw that Kailash Kewat (appellant) was assaulting his own father Krishna Chandra Kewat by the stone meant for crushing spices. He said that he enquired from Kailash Kewat as to what he had done then Kailash Kewat replied that the injured had died and put the stone on the ground. In paragraph 2 of his evidence he further stated that thereafter he went to his house and raised *hulla* and subsequently, his father Mahendra Kewat (P.W. 7) and his other family members including villagers arrived there and saw that Krishna Chandra Kewat was in pool of blood. His whole face was crushed however at that very time he was having some breath. On being asked by the persons who were present his father went to call *tempo* for treatment of injured to hospital, however while his father returned with the *tempo* Krishna Chandra Kewat had already died. He further deposed in paragraph 3 of his evidence that Police had seized the stone meant for crushing spices and on the seizure list he had put his signature however his signature was not got exhibited. In cross- examination he stated that informant was his father and



deceased was his father's own brother. His father were three brothers. His grandfather was having some land. He further clarified that he was not in a position to state as to whether partition had taken place by an agreement or not. This witness in paragraph 5 of his cross examination further stated that appellant was the sole son of his father (एकलौता बेटा). Earlier Krishna Chandra Kewat was not residing with the appellant however, since six months back they started leaving together. In paragraph 6 of cross examination suggestion was given that since his father was informant in the case he had given false evidence and he and his father with a view to usurp parental land present false case was instituted and they were not allowing wife of the appellant to remain stay in the house of the appellant, however such suggestion was denied.

11. Almost in similar manner, P.W. 3 – Tetri Devi [wife of informant - P.W. 7 and *bhabhi* of deceased] and P.W. 4 - Durgawati Devi (wife of P.W. 2) have deposed whereas, P.W. 1 – Ashok Yadav and Sita Ram Yadav (P.W. 5) were co-villagers and hearsay witnesses. P.W. 5 in his evidence deposed that regarding the occurrence he got information from P.W. 3 – Tetri Devi.



12. P.W. 8 – Dr. Tanvir Haider on 17.05.2012 was posted as Medical Officer , Sadar Hospital, Katihar and on the same day he conducted post mortem examination on the dead body of the deceased and found ante mortem injuries and noticed the following facts:

“i) rigor mortis present in all four limbs, average built, dark complexion, eye closed, mouth closed.

Fracture of all front teeth. Lacerated wound on chest, bleeding from both ears, multiple fracture of face bone, fracture and lacerated wound in forehead bone, bruise of neck region. Fracture of nose bone with blood stain.

Internal

i) On dissection of skull- brain cavity full of blood, contusion of brain present, fracture of frontal bone, brain material are congested.

On dissection of thorax – lungs congested heart empty.

On dissection of abdomen – liver, spleen, kidney congested, stomach contains semi solid digested food materials with no specific smell.

Cause of death – cause of death was due to neurologic shock on account of head injury by heavy, hard objects.

Time elapsed since death was 24 hours.”

This witness also stated that the post mortem report was in his pen and signature and same was marked as Ext. 2 .

13. P.W. 9 (Dayakant Paswan) on 17.05.2012 was Sub Inspector of Police in Dandkhora Police Station and as per the direction of the Officer- in- charge he had taken charge of investigation of the present case on the same day i.e. on 17/05/2012. He has identified endorsement on written report , which was marked as Ext. 3. He also identified formal F.I.R.



which was marked as Ext. 4. In paragraph 2 of his evidence he has described regarding the place of occurrence which was the thatched house of deceased and on *verandah* a bed [चौकी] was lying on which dead body of Krishna Chandra Kewat was lying. He further stated that beneath the bed he found one stone meant for crushing spices which was seized by him. He identified the seizure list and same was marked as Ext. 5. In his evidence it has not come as to whether at the place of occurrence i.e. the bed on which dead body was lying there was any blood mark or not, nor he stated that beneath the bed there was blood or not. It is case of prosecution that after the occurrence which had allegedly taken place at 5.00 A.M. on 17.05.2012 written information addressed to Officer- in-charge, Dandkhora Police Station was submitted on the same day and formal F.I.R. was drawn on the same day at 11.30 A.M. It was not a long gap and as such, there was every possibility of finding huge blood at the place of occurrence or on the bed over which deceased was done to death by thrashing his face by means of stone meant for crushing spices Even though seizure list was got exhibited, the material exhibit i.e. stone was not produced during the trial nor there



was any report of chemical expert in respect of the said seized stone. Non-finding of blood on the bed or even beneath the bed where occurrence had taken place raises suspicion as if the deceased was not done to death in the manner as alleged by the prosecution. On examination of the written report and evidences, as per initial version of the informant he was informed by someone else regarding the happening of the occurrence but subsequently, the son of the informant i.e. P.W. 6 – Shambhu Kewat has come out with a case as if he himself had seen the occurrence and he informed the informant and subsequently during evidence, evidence has come out as if he was actually informed by P.W. 6.

14. In the case one defence witness was also examined who was none else but the wife of the appellant. On examination of entire evidence it appears that on the date of occurrence along with the appellant and deceased this witness was also present. It is also evident that till arrival of the Police also the appellant was present.

15. Of course during criminal trial much reliance is not required to be placed on the evidence of defence witness but in special facts and circumstances the evidence of defence



may not be simply ignored. This is a fit case in which evidence of D.W. 1 was required to be taken into account. In her evidence as D.W. 1 (Kunti Devi) she indicted as if P.W. 6 – Shambhu Kewat [son of the P.W. 7 / informant] himself was seen fleeing away after killing the father of husband of this witness. This witness stated that during investigation the Investigating Officer had recorded her statement as well as statement of her husband who was subsequently made accused in the present case. Surprisingly on examination of the evidence of the Investigating Officer it appears that he had not shown any regard regarding statement of D.W. 1. In normal course once after the death of father of her husband Police had visited her house, at first instance it was duty on the part of the Investigating Officer to enquire from son of the deceased as well as daughter- in- law of the deceased but in the present case the appellant who was the son of the deceased was made accused. Evidence further indicates that prosecution side were having ill eye on the ancestral property of which larger share was in possession of the deceased. The prosecution evidence itself shows that deceased was residing alone and appellant with his wife and children were residing in a



different village with his father- in- law. In the evidence of D.W. 1 there is some indication that deceased some time prior to the occurrence had called the appellant and his wife to reside with him. He was apprehensive that his brother who is informant in the present case and family members were having eye on the land in possession of the deceased.

16. On examination of the entire evidence there is reasonable reason to draw an inference that circumstances instead of pointing accusation towards the appellant raises finger against the prosecution. Non recording of 161 Cr.P.C. statement of D.W. 1 during investigation by the Police and also not recording statement of the accused in his self defence during investigation by the Police indicates that the Investigating Officer had not done the same due to some extraneous consideration. In any event, we may not record such specific finding unless thorough investigation is done but considering the fact that occurrence in the present case had taken place more than about 7 years back it appears to be not feasible for directing for *de novo* investigation but in any event the conduct of the Investigating Officer appears to be



not above suspicion which requires examination by the authority concerned.

17. On examination of entire evidence which we have discussed hereinabove we are of opinion that it is a case of false implication, and as such, there is no reason to allow the impugned judgment of conviction and sentence to continue. In view of entire evidences, which we have discussed hereinabove, we are of considered opinion that appellant deserves to be given judgment of clean acquittal. Accordingly, judgment of conviction and sentence dated 03.02.2014 and 11.02.2014 respectively passed by Sri Vidyadhar Prasad Panday, learned Addl. District & Sessions Judge – I, Katihar in S.T. No. 488 of 2012 (arising out of Dandkhora P.S. Case No. 63 of 2012, G.R. No. 1986 of 2012) is hereby set aside and the appeal is allowed. The appellant is in custody and since judgment of conviction has been set aside, it is hereby directed to release him forthwith, if not wanted any other case.

18. Before parting with the judgment it is desirable to direct the concerned Superintendent of Police / Secretary



Home (Govt. of Bihar) to examine the credibility of the Investigating Officer and take appropriate action against him.

19. At the same time, it is also desirable to direct Bihar State Legal Services Authority to make adequate payment to the victim. The Bihar State Legal Services Authority is directed to examine the same for quantifying the compensation amount which is to be paid to the victim which must be paid without unnecessary delay.

20. The appeal stands allowed.

(Rakesh Kumar, J)

(Anjani Kumar Sharan, J)

praful/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	07-09 -2019
Transmission Date	07-09-2019

