

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.853 of 2017

Arising Out of PS. Case No.-139 Year-2013 Thana- GOPALPUR District- Gopalganj

1. Prakash Kushwaha S/o Satyanarayan Bhagat
 2. Chandrawati Devi W/o Satyanarayan Bhagat.
Both R/o Village - Rampur Khurd, P.S. - Gopalganj, District - Gopalganj.
- Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. S. Lal, Adv.
		Mr. Harendra Prasad, Adv.
For the Respondent/s	:	Mr. Bipin Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date : 03-04-2019

1. Appellants, Prakash Kushwaha, Chandrawati Devi have been found guilty for an offence punishable under Section 304B/34 of the IPC and each one has been sentenced to undergo R.I. for seven years as well as to pay fine appertaining to rupees ten thousand in default thereof to undergo S.I. for six months, additionally, vide judgment of conviction dated 14.02.2017 order of sentence dated 15.02.2017 passed by Additional Sessions Judge,Vth, Gopalganj in Sessions Trial No.140/2014.

2. Gyanti Devi (PW.5) gave her fardbeyan on 04.11.2013 while she was at the Sasural of her deceased daughter Kiran Kumari lying at village-Rampur Khurd divulging the fact that deceased Kiran Kumari was married with Prakash Kushwaha



(Appellant No.1) whereupon, came at her Sasural where she led her marital life happily for two years. Then thereafter, her husband, father-in-law, mother-in-law advanced demand of one chain (gold) and rupees one lac which, on account of her financial constrain could not be fulfilled as a result of which, she was subjected to torture and cruelty. Times without number she was kicked out but, due to intervention of relatives anyhow she was allowed to stay at her Sasural. During midst thereof, she had begotten a daughter who is presently of two months. She has further disclosed that today, after receiving the information that her daughter has been murdered by her husband, father-in-law, mother-in-law she along with others rushed came to her place where they have been seen dead body of the deceased having mark over her neck. During midst thereof, police also came on beng informed.

3. After registration of Gopalpur P.S. Case No.139/2013, investigation commenced and after concluding the same charge sheet was submitted, followed with order of cognizance whereupon the accused faced trial and met with the ultimate result, subject matter of instant appeal. It looks pertinent to mention that during course of trial the father-in-law of



deceased, namely, Satya Narayan Bhagat died, on account thereof, his name has been expunged vide order dated 03.01.2017.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has further been pleaded that deceased was suffering from some sort of abnormality whereupon committed suicide. To substantiate the same, also adduced oral as well as documentary evidence.

5. The prosecution has examined altogether eight PWs in order to substantiate its case who are, PW.1-Amerika Prasad, PW.2-Krishna Kushwaha, PW.3-Umesh Kumar, PW.4-Ramnath Prasad, PW.5-Gayanti Devi, PW.6-Dulan Bhagat, PW.7-Uma Shanker Chaudhary, PW.8-Dr. Imteyaz Ahmad as well as has also exhibited Ext.1-Signature of Krishna Kushwaha over written report, Ext.1/1-Signature of Umesh Kumar over written report, Ext.1/2-Signature of Dulam Bhagat over written report, Ext.2-Signature of Gyanti Devi over written report, Ext.3-Seizure list. Side by side three Dws have also been examined on behalf of defence who are DW.1-Mahendra Kushwaha, DW.2-Arun Kumar Sharma and DW.3-Rajeev Ranjan Shrivastava as well as has also exhibited Ext.A/1-Letter written by the deceased Kiran Devi,



Ext.A/2-Letter written by Kiran Devi, Marked-X-Photocopy of Ext.A/1, Marked-Y-Photocopy Ext.A/2, Ext.B- Expert report..

6. After going through the record along with judgment impugned, it is apparent that the learned lower court has passed a cryptic nature of judgment on account thereof, same is fit to be set aside and matter has to be referred to the learned lower court for passing, afresh a judgment after hearing the parties. That being so, the instant judgment is not at all burdened with the submissions whatever been made at the rival end on the merit of the case along with the evidences. At the stage of argument itself the deficiency persisting on the judgment has been pointed out over which both the parties were requested to address the court. The simple submission having at the end of appellant is that there happens to be fault of the court and so, appellants be acquitted while the learned APP confronting the submission having at the end of the appellant has submitted that it is not a case wherein there should be judgment of acquittal, rather lower court be directed to take afresh exercise.

7. From the record it transpires that appellants were charged for an offence punishable under Section 304B/34 of the IPC as well as 302/34 of the IPC and the trial proceeded under aegis thereof. As stated, after closer of the prosecution case



statement of accused under Section 313 of the Cr.P.C. were recorded and during course thereof same nature of activity has been followed at the end of the lower court. In defence, by way of examination of three DWs the appellants/accused had pleaded it a case of suicide, however due to mental abnormality.

8. Be that as it may, when the judgment impugned has been gone through, it is evident therefrom, that save and except having reference of framing of charge under Section 302/34, 304B of the IPC, brief reference of the prosecution case, from para-6, 7, 8 the evidences on behalf of prosecution, defence have been dealt with. During course thereof, it is evident that learned lower court had not cared to elaborate the evidence at all and further, the cross-examination as, the evidence consist examination-in-chief, cross-examination and re-examination if any in accordance with Section 136 of the Evidence Act. Due to aforesaid fault, probability the learned lower court failed to properly scrutinize the evidence in order to trace out whether a case under Section 302/34 IPC is made out or under Section 304B/34 IPC. On the other hand, it is evident from the judgment impugned that there happens to be no finding at the end of the learned lower court with regard to Section 302 of the IPC. Because of the fact that the learned P.O. had not marshalled the



evidence and so, he left to scrutinize the evidence enabling to form an opinion whether the evidence as on record substantiate a case under Section 302/34 IPC or Section 304/34 IPC. Apart from this, the learned lower court also failed to perceive the ingredients of Section 304B of the IPC inconsonance with the presumption though rebuttable as provided under Section 113B of the Evidence Act inconsonance with proper appreciation of the materials having at the end of the appellant/accused.

9. In order to entwine the lower court with the art of writing judgment as well as the requirements therefor, first of all Section 354 Cr.P.C is to be seen and for better appreciation, same is quoted below:-

“354. Language and contents of judgment.-(1)

Except as otherwise expressly provided by this Code, every judgment referred to in section 353,-

- (a) shall be written in the language of the Court;
- (b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;
- (c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted and the punishment to which he is sentenced;
- (d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(2) When the conviction is under the Indian Penal Code (45 of 1860), and it is doubtful under which of two sections, or under which Of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in



the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Code.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(6) Every order under section 117 or sub- section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision.”

10. In Prem Kaur v. State of Punjab & Ors.

reported in **AIR 2013 SC 2083**, it has been held:-

“10.The findings recorded by the courts below may be perverse for the reasons that the Trial Court did not record any sound reasoning for acquittal, though it had been the case of the prosecutrix that she remained hospitalised. She had deposed in court that she had been subjected to the aforesaid crime. The High Court had also been swayed by the reasoning recorded by the Trial Court without making much effort to find out the truth in the case.

11.In H.B. Gandhi and Ors. v. Gopi Nath and Sons, 1992 Supp (2) SCC 312, this Court held that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.

12.In Triveni Rubber and Plastics v. Collector of Central Excise, Cochin, AIR 1994 SC 1341 : (1994 AIR SCW 775) this Court held that an order suffers from perversity, if relevant piece of evidence has not been considered or if certain inadmissible material has been taken into consideration or where it can be said that the findings of the authorities are based on no evidence at all or if they are so perverse that no reasonable person would have arrived at those findings.

13.In Kuldeep Singh v. Commissioner of Police and Ors., AIR 1999 SC 677 : (1999 AIR SCW 129) this Court while re-iterating the same view added that, if there is



some evidence on record which is acceptable and which could be relied upon, howsoever, compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

14.In *Gaya Din and Ors. v. Hanuman Prasad and Ors.*, AIR 2001 SC 386 : (2000 AIR SCW 4275) this Court further added that an order is perverse, if it suffers from the vice of procedural irregularity.

15.In *Rajinder Kumar Kindra v. Delhi Administration*, AIR 1984 SC 1805, the Court while dealing with a case of disciplinary proceedings against an employee considered the issue and held as under--

"It is equally well-settled that where a quasi-judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.they disclose total non-application of mind.... The High Court, in our opinion, was clearly in error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence."

16.This Court in *Satyavir Singh v. State of Uttar Pradesh* (2010) 3 SCC 174 : (AIR 2010 SC (Supp) 651 : 2010 AIR SCW 1442) held:

" 'Perverse' was stated to be behaviour which most of the people would take as wrong, unacceptable, unreasonable and a

'perverse' verdict may probably be defined as one that is not only against the weight of the evidence but is altogether against the evidence. Besides,, a finding being 'perverse', it could also suffer from the infirmity of distorted conclusions and glaring mistakes."

17.If the judgments of the courts below are examined in the light of the aforesaid settled legal proposition, the same have to be labelled as suffering from perversity.

18.The Trial Court did not decide the case giving adherence to the provisions of Section 354 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.'). The said provisions provide for a particular procedure and style to be followed while delivering a judgment in a criminal case and such format includes a reference to the points for determination, the decision thereon, and the reasons for the decision, as pronouncing a final order without a reasoned judgment may not be valid, having sanctity in the eyes of the law. The judgment must show proper application of the mind of the Presiding Officer of the court, and that there was proper evaluation of all the evidence on record, and the conclusion is based on such appreciation/evaluation of



evidence. Thus, every court is duty bound to state reasons for its conclusions.

19.In *State of Punjab v. Jagir Singh Baljit Singh and Karam Singh*, AIR 1973 SC 2407, this Court held as under:

"A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

20.In *Mukhtiar Singh and Anr. v. State of Punjab*, AIR 1995 SC 686 : (1995 AIR SCW 467) this Court emphasised on the compliance of the statutory requirement of Section 354, Cr.P.C., observing as under:

".....same is far from satisfactory. Both, the order of acquittal as well as the order of conviction, have been made by the trial Court in a most perfunctory manner without even noticing much less, considering and discussing the evidence led by the prosecution or the arguments raised at the bar....It was in paragraphs 28 to 32, noticed above, that the orders of acquittal and conviction were made. The trial Court was dealing with a serious case of murder. It was expected of it to notice and scrutinize the evidence and after considering the submissions raised at the bar arrive at appropriate findings..... There is no mention in the judgment as to what various witnesses deposed at the trial, except for the evidence of the medical witness. The judgment does not disclose as to what was argued before it on behalf of the prosecution and the defence. The judgment is so infirm.....The trial Court appears to have been blissfully ignorant of the requirements of Section 354(i)(b), Cr. P.C. Since, the first appeal lay to this Court, the trial Court should have reproduced and discussed at least the essential parts of the evidence of the witnesses besides recording the submissions made at the bar to enable the appellate Court to know the basis on which the 'decision' is based. A 'decision' does not merely mean the 'conclusion' - it embraces within its fold the reasons



which form the basis for arriving at the 'conclusions'. The judgment of the trial Court contains only the 'conclusions' and nothing more. The judgment of the trial Court cannot, therefore, be sustained. The case needs to be remanded to the trial Court for its fresh disposal by writing a fresh judgment in accordance with law." (Emphasis added)

21. Thus, in view of the above, the law can be laid down that the court must give reasons for reaching its conclusions. The courts below have dealt with the matter in a very summary fashion. The statements of reasons, for the conclusion reached by them, which could have been more enlightening, are missing. The judgments of the courts below do not comply with the requirement of the statutory provisions as laid down in Cr.P.C. The view taken by the courts below is manifestly unreasonable and has resulted in miscarriage of justice. The courts ought not to have given the defective and cryptic judgment. In fact it is no judgment in the eyes of the law. We are not in a position to judge the correctness, legality and propriety of the findings recorded by the courts below. The absence of sound reasons is not a mere irregularity, but a patent illegality.

11. In Prasad @ Hari Prasad Acharya vs State Of

Karnataka reported in **AIR 2009 SC 1911**, it has been held:-

“8. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind. The absence of reasons has rendered the High Court's judgment not sustainable.

9. Even in respect of administrative orders Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union* (1971) 1 All ER 1148, observed : "The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery (Dudley) Ltd. v. Crabtree* 1974 ICR 120 (NIRC) it was observed : "Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an



application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

12. In Mukhtiar Singh and another v. State of

Punjab reported in **AIR 1995 SC 686**, it has been held:-

"12. We have gone through the judgment of the learned trial Judge and find that the same is far from satisfactory. Both, the order of acquittal as well as the order of conviction, have been made by the trial Court in a most perfunctory manner without even noticing much less, considering and discussing the evidence led by the prosecution or the arguments raised at the bar. The trial Court noticed the prosecution case, the medical evidence and the material collected during the investigation of the case besides the arrest of different accused person on different dates in paras 1 to 23 of the judgment. In paragraph 24 it noticed the names of the prosecution witnesses and in paragraphs 25 and 26 it noticed the fact that the accused had been examined under Section 313 Cr. P.C. It was in paragraphs 28 to 32, noticed above, that the orders of acquittal and conviction were made. The trial Court was dealing with a serious case of murder. It was expected of it to notice and scrutinize the evidence and after considering the submissions raised at the bar arrive at appropriate findings. In vain have we searched through the cryptic judgment of the trial Court the reasons which prevailed with it to acquit the respondents in Criminal Appeal No. 489 of 1985 or convict the appellants in Criminal Appeal No. 434 of 1985. On the plainest requirement of justice and fair trial the least that was expected of the trial Court was to notice, consider and discuss, howsoever briefly, the evidence of various witnesses as well as the arguments addressed at the bar. The trial Court has not done so. The trial Court apparently failed in the discharge of its essential duties. There is no mention in the judgment as to what various witnesses deposed at the trial, except for the evidence of the medical witness. The judgment does not disclose as to what was argued before it on behalf of the prosecution and the defence. The judgment is so infirm that we are unable to appreciate as to how the findings were arrived at. The judgment of the trial Court is truly speaking not a judgment in the eye of law. The trial Court appears to have been blissfully ignorant of the requirements of



Section 354(i)(b) Cr. P.C. Since, the first appeal lay to this Court, the trial Court should have reproduced and discussed at least the essential parts of the evidence of the witnesses besides recording the submissions made at the bar to enable the appellate Court to know the basis on which the 'decision' is based. A 'decision' does not merely mean the "conclusion" - it embraces / within its fold the reasons which form the basis for arriving at the "conclusions". The judgment of the trial Court contains only the "conclusions" and nothing more. The judgment of the trial Court cannot, therefore, be sustained. The case needs to be remanded to the trial Court for its fresh disposal by writing a fresh judgment in accordance with law."

13. In Jamuna Chaudhari & Ors vs State Of

Bihar reported in **AIR 1974 SC 1822**, it has been held:

"18. When the appellants took their appeal to the High Court neither the evidence of the witnesses nor the cases of the individual accused except Jamuna were discussed at all. The High Court observed that, in view of the arguments, advanced, it would reduce the sentences of each of the accused persons, other than Jamuna appellant, by half. So far as Jamuna appellant was concerned, it dealt with the case only to point out that the head injury was a stray one. This injury had been held, by the High Court also, to be outside the scope of the common object. The High Court came to the conclusion that the appellant Jamuna could only be convicted under Section 304 I. P. C. In part for the injury on Laldhari's head. Therefore, convicting him under that section, it sentenced him to five years' rigorous imprisonment. It maintained his conviction under Section 147 I. P. C. With the necessary modifications, the appellants' appeals were dismissed.

19. We are unable to discover from the judgment of the High Court whether the learned counsel for the appellant had confined his submissions to those affecting the sentences or alteration of the Section under which the appellant Jamuna was to be convicted. We can only infer, from the observations of the High Court, that this may explain the very superficial manner in which the case was dealt with by the High Court. We may, however, observe that learned counsel are expected to assist Courts in reaching a correct conclusion in a case in which so much evidence and so many witnesses and points worth consideration were there. The High Court had dealt with the appeal in a very summary fashion. It would have been better if the statement of reasons for



the conclusions reached by it was more enlightening. The judgment under appeal does not comply with the requirements of Section 367, Criminal Procedure Code.”

14. Accordingly, the judgment impugned is set aside.

Appeal is allowed. Matter is remitted back to the learned lower court to hear both the parties and pass a judgment, afresh. Appellants who are under custody are directed to be produced before the learned lower court. In the background of tenure of custody, the learned lower court is directed to dispose it of within three months from the date of receipt of the judgment/lower court record. Office is directed to transmit the record along with judgment to the learned lower court through special messenger, at once so that trial be concluded in terms of directions.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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