

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1044 of 2013**

Arising Out of PS. Case No.-124 Year-2001 Thana- AMARPUR District- Banka

1. Ranjeet Yadav.
2. Ajit Yadav both sons of Ganesh Yadav.
3. Ganesh Yadav Son Of Late Tejnarayan Yadav
4. Satya Bhama Devi Wife Of Ganesh Yadav all Resident Of Village- Teliya More, P.S.- Fullidumer, District- Banka

... .. Appellant/s

Versus

The State Of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Aruni Singh, Adv. Ms. Rani Kumari, Adv.
For the Respondent/s	:	Mr. Ajay Mishra, A.P.P

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN)

Date : 19-08-2019

The appellants preferred the present appeal under Section 374(2) and 389 (1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘Cr.P.C.’) against the judgment of conviction dated 30.10.2013 and order of sentence dated 02.11.2013 passed in Sessions Trial No. 614 of 2011/372 of 2013 (Arising out of Amarpur [Fullidumar] P.S. Case No. 124 of 2001) by Sri Jyotindra Kumar Sinha, 1st Additional Sessions Judge, Banka (hereinafter referred to as the ‘Trial Judge’). By judgment dated 30.10.2013, the appellants were convicted for



commission of offence under Section 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'I.P.C.') and by order dated 02.11.2013, the appellants have been sentenced to undergo imprisonment for life under Section 302/34 I.P.C. with fine Rs. 10,000/- each and in default of payment of fine have been directed to undergo R.I. for one year. Further they have been sentenced to undergo imprisonment for five year under Section 328/34 of I.P.C. with fine of Rs. 5,000/- each and in default of payment of fine were directed to undergo R.I. for one year. All the sentences were directed to run concurrently.

2. The short facts of the case is that the informant namely, Ramjee Yadav, P.W.-7 on 21.07.2001 at 1:00 AM gave his fardbeyan which was recorded by S.I., S.S. Prasad (not examined) at Teliya More. According to fardbeyan, it is alleged that he had married his sister Sangita Devi in the year 1999 as per Hindu customs with the accused Ranjeet Yadav and after marriage his sister was in her marital place and the marriage was performed after giving sufficient gift and dowry. It is alleged that on 20.07.2001 at 7 P.M., in the evening, he was informed by Mithilesh Kumar P.W.-5 that his sister Sangita Devi was poisoned to death by her in-laws and on this information, he went to village-Telia More, the marital village of his sister along



with Upendra Yadav P.W.-2 and on inquiry, he came to know that his sister Sangita Devi on 20.07.2001 at 3 P.M. was administered poison by the husband Ranjeet Yadav (appellant no. 1), father-in-law Ganesh Yadav (appellant no. 3), Dewar Ajit Kumar (appellant no. 2), mother-in-law Satya Bhama Devi (appellant no. 4) and Nandoshi Fantus Yadav due to which she died and they had kept the dead body in the house. His sister was aged about 22 years and she had no issue. It was alleged that his sister was being tortured by the accused persons because she was suffering from Polio in the right leg. The fardbeyan was read over to him and after finding it correct, he put his signature on the fardbeyan.

3. On the basis of fardbeyan Amarpur (Fullidumar) P.S. Case No. 124 of 2001 was registered on 21.07.2001 at 13.15 AM under Sections 302/328/34 I.P.C. against the appellants. During investigation, the appellants were arrested and since case was found true, charge-sheet was submitted on 29.05.2005 against the four accused persons/appellants. No evidence was found by the police against Fantus Yadav. On 28.09.2005, the learned Chief Judicial Magistrate, Banka took cognizance of the offence and after compliance of the provision under Section 207 of the Cr.P.C., on



07.06.2011 the case was committed to the court of Sessions and it was numbered as Sessions Trial No. 614 of 2011/372 of 2013. On 18.01.2012 charges under Section 328/34, 302/34 I.P.C. was framed against the appellants.

4. During trial, on behalf of the prosecution, altogether 7 witnesses were examined. Out of 7 witnesses, P.W. 1 Janki Devi (co-villager and neighbor of the accused persons), P.W.2 Upendra Yadav (uncle of deceased Sangita Devi and witness of the inquest report) P.W.-3 Braj Nandan Yadav (co-villager of the accused persons and Devar of the deceased) P.W. 4 Dr. Sunil Mandal who was posted as the Medical Officer, Sub Division, Banka, P.W. 5 Mithilesh Kumar (brother-in-law of P.W.-7 and also the inquest witness) P.W.-6 Shiv Nath Yadav (co-villager of the appellant) and P.W. 7 Ramjee Yadav (informant and brother of the deceased).

5. After examination of the prosecution evidence on 05.02.2013, the evidence and circumstances against the appellants were explained to the appellants and their statement under Section 313 of the Cr.P.C. was recorded, in which, they claimed to be innocent.

6. Sri Aruni Singh, learned counsel for the appellants, after placing entire evidence, has argued that the



fardbeyan of the informant Ramjee Yadav, P.W.-7 was recorded by S.I., S.S. Prasad (not examined) Officer In-Charge of Fullidumar police station on 21.07.2001, at about 1.30 hours (night) at Teliya More and accordingly an F.I.R. was registered on 21.07.2001 at about 13.15 hours (1.15 P.M.) but surprisingly the formal F.I.R. was received and seen by the concerned court on 23.07.2001. Thus, this position speaks for itself. He further submitted that after institution of the case, the investigation commenced and the Investigating Officer (not examined) inspected the place of the occurrence, recorded the statement of the witnesses, prepared the inquest report and after completion of the investigation submitted charge-sheet on 29.05.2005 under Section 302, 328/34 of the Indian Penal Code against four accused/appellants and no evidence was found by the police against F.I.R. named accused Fantus Yadav.

7. Learned counsel for the appellants further submitted that the investigating officer has not been examined in this case and his non-examination prosecution has offered no valid reasons. Thus, in the facts and circumstances of this case the non-examination of the Investigating Officer has greatly prejudiced the defence. There is unreasonable delay in dispatching of the F.I.R. to the court and it is apparent from the



postmortem report that the same was conducted on 21.07.2001 at 10.20 AM whereas the concerned F.I.R. was drawn much later at 13.15 hours on 21.07.2001 when fardbeyan alleged to have been made by the informant Ramjee Yadav (P.W.-7) at 1.30 hours in night itself. He further submitted that defence case has seriously been prejudiced on the point of alleged fardbeyan due to non-examination of the Investigating Officer. Learned counsel for the appellant further submitted that the Doctor (P.W.-4) was examined on 28.02.2013 but the prosecution have exhibited the Viscera Report on 18.03.2013 as Ext. 3 though the report was received by the prosecution on 04.02.2004 itself. He further submits that under Section 313 Cr.P.C. the appellants were not explained regarding the Viscera report and as such fact disclosed as per Viscera report was not required to be taken note by the learned Trial Judge.

8. The learned counsel for the appellants further submits that P.W.1 Janki Devi in para-2, P.W. 2 Upendra Yadav in paras-1, 2 and 3, P.W. 5 Mithilesh Kumar in para 6 and 7 and P.W. 6 Shiv Nath Yadav in para-3 of their respective deposition have categorically stated that deceased Sangita Devi had cordial relation with her in-laws, but was under depression due to her physical disability caused by polio and further she had no child



though she was married. He further submits that there is no eye witness to the alleged occurrence, there is contradiction and inconsistency in the evidence of prosecution witnesses and as such impugned judgment of conviction and sentence is liable to be set aside.

9. Mr. Ajay Mishra, learned Additional Public Prosecutor for the State opposing the appeal has argued that the case is crystal clear and there is no material to raise doubt on the prosecution case. He further submitted that the place of occurrence is not disputed. Deceased died in her matrimonial house. Non-examination of the I.O. in this case may not be considered as fatal for prosecution in view of other reliable witnesses and circumstances. In the instant case diary submitted by the I.O. is on the record, which shows that the I.O., investigated the case in its right perspective, went to the place of occurrence, sent the deceased for post-mortem examination and obtained the post-mortem report (Ext. 2), collected the material as evidence. The learned APP has further argued that F.S.L. report makes it clear that after examination of Viscera of deceased, ALUMINIUM PHOSPHIDE was detected in the dark-brown fluid commercially known as CELPHOS. Besides medical and other evidence, all the witnesses are consistent and



there is nothing on record to suggest that there is any doubt in the prosecution case. He has argued that there is no reason to interfere with the judgment of conviction.

10. The fact remains that during the trial neither the Investigating Officer has been examined nor any plausible explanation has been given by the prosecution for non-examination of the I.O.

11. We have carefully considered the evidence of P.W.-1 to P.W. 7. It is necessary to discuss only those aspects of their respective depositions which pertain to the role attributed to the various accused.

12. First of all, we are discussing the oral evidence of the informant namely Ramji Yadav (P.W.-7). The informant has stated that the occurrence is of 20.07.2007 at 7 P.M. Mithilesh Kumar (brother-in-law of his elder brother), informed him that his sister Sangita Devi died due to forcibly administering poison. In para-2 of his examination in chief, he has further stated that he reached the marital home of Sangita Devi and has seen the dead body of Sangita Devi. Not a single accused person was present there. In para no. 3, he has stated that the villagers told that Ranjeet Yadav, Ajit Yadav, Satyabhama Devi and Ganesh Yadav had administered poison to



Sangita Devi and killed her. In para no. 4 of his testimony, the informant has further stated that his sister got married with Ranjeet Yadav in the year 1999 and 'Dwiragaman' was performed in the year 2000. After Dwiragaman, his mother told him that Ranjeet and Satya Bhama used to demand money from Sangita Devi. The accused persons used to demand Rs. 50,000/-. As they have not paid the money, so the occurrence was committed by them. In para no. 8 of his cross examination, he has stated that he got the knowledge of occurrence of death through Mithilesh Kumar. In para no. 9 of cross examination, he has further deposed that an issueless handicapped lady would not be sad unless and until she would be tortured by her family members. In para no. 10, he has stated that Sangita Devi, the deceased was issueless. Para-11 of this witness where he has stated that after signing the fardbeyan, he has not met again with the police. He has also stated that the demand of money by the accused persons is not mentioned in the fardbeyan. In para no. 15 of cross examination, he has stated that when he and Upender arrived at the marital home of Sangita Devi, not a single accused was present there. P.W.7 (informant) has fully supported his fardbeyan but on cross-examination this witness has stated the fact which fully contradicts his claim.



13. P.W.-1 (Janki Devi) co-villager and neighbor of the accused persons stated that the occurrence has taken place about 10 years back. Sangita Devi died of stomachache. Except this, she has no other knowledge. In cross examination, she has stated that there is only one house in between her house and the house of the accused persons and further she admitted that deceased had cordial relations with her husband and her in-laws.

14. P.W.-2 (Upendra Yadav) uncle of the deceased has stated that the occurrence is of 20.07.2001. He got the knowledge of the occurrence at 9 P.M. This witness is the distant uncle in relation of the deceased. He got the knowledge of occurrence through Mithilesh Kumar (P.W.5). After that he, Mithilesh and Ramjee Yadav, informant (P.W.7) went to the marital home of the deceased. The dead body of Sangita Devi was kept on a cot and not a single accused was present there as they were absconding. The villagers told that she was suffering from severe pain in stomach at the time of her death. He has also stated that Sangita Devi was married with Ranjeet Yadav about two years ago of the occurrence. This witness has proved his signature upon the inquest report Ext. 1. In cross examination, he has stated that relationship of the deceased with the members of her marital home was of general in nature. He



has further disclosed and admitted in his evidence that deceased Sangita Devi due to her disabilities (from polio) was leading a depressed life.

15. P.W.-3 (Braj Nandan Yadav) has stated that he has heard that the wife of Ranjeet Yadav died due to stomachache. Except this, this witness has stated nothing.

16. P.W.-5 Mithilesh Kumar (brother-in-law of Ramjee Yadav) has fully supported the version of F.I.R. in his testimonies. He has stated that when he was on road of the village at about 7-8 P.M., then his friends told him that some occurrence has been taken place with the sister-in-law (Nanad) of his sister. He went to the house of marital home of Sangita Devi and found her dead body on a cot. This witness has signed the inquest report (Ext. 1). In his evidence particularly in para-5, 6 and 7, he admits that the family members of deceased sasural were weeping near the corpse and this witness has disclosed that Sangita Devi (deceased) had never made any complain against her in-laws but she had no child and was disabled from polio and had trouble in walking.

17. P.W.-6 (Shiv Nath Yadav) has stated that the occurrence is of year 2001. He has also stated that Sangita Devi had severe pain in the stomach and due to that pain she died.



Except this, he has stated that he had no other knowledge.

18. P.W.-4 is Dr. Sushil Mandal and he has stated that on 21.07.2001 he was posted as Medical Officer, Sub Division, Banka and conducted postmortem examination of Sangita Devi and he found the following antemortem injuries:

‘1. Lacerated wound on the posterial side of the right fore arm size 2”X1/4” X cuticular deep. He has stated that the injury was caused by hard and blunt object. He has also stated that Viscera of Lungs, heart, liver, kidney, spleen, stomach with content, and a loop intestine were preserved.’

Following Visceras were preserved

- (i) a portion of lungs
- (ii) a portion of heart
- (iii) a portion of liver
- (iv) one kidney
- (v) whole spleen
- (vi) whole stomach with contents
- (vii) a loop of intestine

Injury-1 was caused by H.B. object time elapsed since death 24 hours

This report is in my writing and bears my signature-Exhibited as Ext.2’

19. Coming to the facts of this case, F.S.L. Report, Ext. 3 was relied upon by the trial court. The objection as to the defective 313 of the Cr.P.C. statement has not been raised in the trial court, and the omission to put the question



under Section 313 Cr.P.C., and prejudice caused to the accused is raised before this Court for the first time. It is admitted position that P.W.4, Doctor was examined on 28.02.2013 but the prosecution have exhibited the viscera report on 18.03.2013 as Ext.3, though the report was received by the prosecution on 04.02.2004 itself.

20. In such a situation, the Hon'ble Apex Court in the case of **Nar Singh Vs. State of Haryana** since reported in **2015 (1) PLJR (SC) 208** paragraph 9 of the judgment has observed thus:

9. The power to examine the accused is provided in Section 313 Cr.P.C. which reads as under:-

“313. Power to examine the accused.-(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination



under Clause(b).

(2) No oath shall be administered to the accused when he is examined under Sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.”

10. There are two kinds of examination under Section 313 Cr.P.C. The first under Section 313(1) (a) Cr.P.C. relates to any stage of the inquiry or trial; while the second under Section 313(1) (b) Cr.P.C. takes place after the prosecution witnesses are examined and before the accused is called upon to enter upon his defence. The former is particular and optional; but the latter is general and mandatory. In **Usha K. Pillai vs. Raj K. Srinivas & Ors.***, (1993)3 SCC 208, Apex Court held that



the Court is empowered by section 313(1) clause (a) to question the accused at any stage of the inquiry or trial; while Section 313(1) clause (b) obligates the Court to question the accused before he enters his defence on any circumstance appearing in prosecution evidence against him.”

21. In **Nar Singh’s** case (supra) further it is dealt with by the Apex Court in the aforesaid judgment in para-30;

“30. Whenever a plea of omission to put a question to the accused on vital piece of evidence is raised in the appellate court, courses available to the appellate court can be briefly summarized as under:-

(I) Whenever a plea of non-compliance of Section 313 Cr.P.C. is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer;

(ii) In the facts and circumstances of the case, if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice



was occasioned, the appellate court will hear and decide the matter upon merits;

(iii) If the appellate court is of the opinion that non-compliance with the provisions of Section 313 Cr.P.C. has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313Cr.P.C. and the trial Judge may be directed to examine the accused afresh and defence witness if any and dispose of the matter afresh;

(iv) The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused.

22. In **Nar Singh's** case (supra) further it is dealt with by the Apex Court in the aforesaid judgment in para-31 as follows: In **Abdul Rehman Antulay and Ors. vs. R.S. Nayak and Anr.***, (1992)1 SCC 225. In paras (63) and (64) of the said



judgment it was held as under:-

“63. In *Machander vs. State of Hyderabad*, (1955)2 SCR 524, this Court observed that while it is incumbent on the Court to see that no guilty persons escapes, it is still more its duty to see that justice is not delayed and accused persons are not indefinitely harassed. The scales, the Court observed, must be held even between the prosecution and the accused. In the facts of that case, the Court refused to order trial on account of the time already spent and other relevant circumstances of that case.

64. In *Veerabadran Chettiar vs. Ramaswami Naicker*, (1959) SCR 1211, this Court refused to send back proceedings on the ground that already a period of five years has elapsed and it would not be just and proper in the circumstances of the case to continue the proceedings after such a lapse of time. Similarly, in *Chajoo Ram vs. Radhey Shyam*, (1971)1 SCC 774, the Court refused to direct a re-trial after a period of 10 years having regard to the facts and circumstances of the case. In *State of U.P. vs. Kapil Deo Shukla*, (1972) 3 SCC 504, though the Court found the acquittal of the



accused unsustainable, it refused to order a remand or direct a trial after a lapse of 20 years.”

23. Non-compliance of the mandatory provisions of Section 313 Cr.P.C., we agree to some extent that the appellant is prejudiced on account of omission to put the question as to the opinion of F.S.L. Report Ext.3 which was relied upon by the trial court. The trial court should have been more careful in framing the questions and in ensuring that all material evidence and incriminating circumstances were put to the accused. The appellants are in custody since more than 8 years. It is the fact that the prosecution has not brought on record any credible evidence.

24. In the instant case also, occurrence took place in 2001 whereas judgment of conviction and order of sentence was passed on 03.10.2013 and 02.11.2013 respectively. Further, the appellant (Ranjeet Yadav) has already remained in custody for about eight (8) years.

25. Thus, in the aforesaid facts and circumstances as well as to meet the ends of justice, in view of principles laid down in the case of **Nar Singh Vs. State of Haryana** (supra), we do not find it appropriate to remand the matter to the trial court for re-trial, rather we think it proper to



decide the case on its own merit keeping in view the prejudice caused to the accused/appellants. We have also considered the vital and material contradiction in the deposition of the witnesses about the manner of occurrence as well as other infirmities discussed hereinabove, particularly no one had seen the appellants administering poison.

26. Considering the aforesaid facts and circumstances of the case and evidence adduced by the prosecution, we find and hold that the prosecution has utterly and miserably failed to substantiate its case and bring home the charge levelled against the appellants beyond all reasonable doubt by adducing convincing, cogent, consistent and worth credence evidence.

27. Accordingly, judgment of conviction and sentence dated 30.10.2013 and 02.11.2012 respectively passed by Sri Jyotindra Kumar Sinha, 1st Additional Sessions Judge, Banka in Sessions Trial No. 614 of 2011 /372 of 2013 (arising out of Amarpur (Fullidumar) P.S. Case No. 124 of 2001) is, hereby, set aside. The appeal is allowed. Since the appellants (Ranjeet Yadav) is in jail, it is directed to release him forthwith if not wanted in any other case. In respect of other three appellants namely, Ajit Kumar, Ganesh Yadav and Satya Bham



Devi, who are on bail, they are discharged from liability of their bail bonds.

28. Accordingly, this appeal is allowed.

(Anjani Kumar Sharan, J)

Rakesh Kumar, J: I agree

(Rakesh Kumar, J)

devendra/-

AFR/NAFR	AFR
CAV DATE	29.07.2019
Uploading Date	19.08.2019
Transmission Date	

