

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 401 of 2011**

- Navishchandra @ Naveshchandra Yadav, S/o Vishwanath Yadav, aged about 40 years, R/o Village Piplamar, Police Station Pendra, District Bilaspur, Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh, Through the Police Station, Pendra, District Bilaspur, Chhattisgarh

---- Respondent**CRA No. 1202 of 2017**

- Patram Yadav S/o Rai Singh Yadav. Aged About 42 Years R/o Village Pipla Marg, Police Station Pendra, Tahsil Pendra, District Bilaspur Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through The Police Station Pendra, District Bilaspur Chhattisgarh

---- Respondent

For Petitioners	Mr. Ashok Soni, Advocate
For Respondent /State	Ms. Madhunisha Singh, Panel Lawyer

DB: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mr. Justice Gautam Chourdiya****Judgment on Board by Prashant Kumar Mishra, J.****9/8/2019**

1. Heard.
2. These two appeals would arise out of the same judgment of conviction and sentence dated 24.2.2011 passed by the Additional Sessions Judge (FTC), Pendraroad, District Bilaspur (CG) in ST No.34/2010, whereby, the Additional Sessions Judge has convicted the appellants (accused) under Sections 302/34 and 328/34 of IPC and sentenced them to undergo RI for life and RI for 3 years respectively with default sentences.
3. Aadhar Singh, father-in-law of deceased Lok Singh had purchased the land belonging to one Janmati Gond, who happens to be the Aunt (*Bua*) of appellant Navishchandra. Deceased Lok Singh was cultivating the land, therefore, appellant Navinschandra had raised a dispute with Lok Singh and their relations were not normal. It is stated that because of this enmity, appellant Navishchandra conspired with appellant Patram Yadav to eliminate deceased Lok Singh and in execution of the conspiracy, he handed over *Prasad* (Propitiatory) containing poisonous substance to Patram with instructions to distribute the said *Prasad* to Lok Singh. On 2.4.2010, at about 7 p.m., appellant Patram distributed the *Prasad* to Lok Singh as also to PW-1 Janmati Gond, sister of the deceased and PW-2 Kamla Bai, wife of the deceased. Some part of the *Prasad* received by Lok Singh himself was also given to PW-9 Devkumari, Niece (*Bhanji*) of the deceased, who used to reside in the same house. Immediately, after consuming the *Prasad*,

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Lok Singh started vomiting and his condition soon deteriorated, therefore, he was taken to Community Health Centre, Pendra Road, where he was given First Aid by PW-7 Dr. Devendra Singh Paikra. Lok Singh died in the course of treatment, where-after, his postmortem was conducted by Dr. H.K. Tanwar, who submitted his report-Ex.-P/23. The Autopsy Report contained a finding of suggestive toxication after ingestion of some poisonous thing, but it could not be identified. The viscera were preserved and sent to Forensic Science Laboratory to find out the cause of death after chemical analysis.

4. Soon after the death, a merg was registered vide Ex.P/9 and thereafter, FIR Ex.-P/6 was registered on 2.5.2010 on the basis of the Postmortem report. In the course of investigation, case diary statements of the witnesses were recorded and the samples of vomitus, remaining part of the *Prasad* consumed by the deceased and the *Prasad* distributed to PW-1 Janmati and PW-2 Kamla Bai were recovered vide Ex.P/5. On 3.4.2010 i.e. on the very next day of the incident, these samples were sent for chemical analysis by the Forensic Science Laboratory vide Ex.P/16, which was received by the said Laboratory vide Ex.P/17, however, the FSL report was not filed either with the charge sheet or in the course of trial.
5. The prosecution, thus, proceeded to conduct trial and establish the guilt on the basis of the MLC Report, postmortem report and the case diary statements of the witnesses mainly PW-1

Janmati Gond, PW-2 Kamla Bai and PW-9 Devkumari.

6. The trial Court has convicted the appellants on the finding that appellant Patram Yadav had distributed the *Prasad* in execution of a conspiracy hatched by him and appellant Navishchandra and the postmortem report has found the presence of poisonous substance in the body of the deceased, therefore, the charges have been proved.
7. Assailing the conviction, Mr. Ashok Soni, learned counsel for the appellants, would submit that in the absence of FSL report, there is absence of conclusive evidence to prove death by poisoning or offering of any poisonous substance by appellant Patram to the deceased, therefore, the conviction is wholly unjustifiable. He would also submit that the appellants should not be convicted merely on the basis of suspicion that they had handed over some poisonous substance to deceased Lok Singh causing his death.
8. Ms. Madhunisha Singh, learned counsel for the State would refer to the evidence available on record to argue that there is strong evidence against the appellants including the motive to commit the crime. Therefore, coupled with the Doctor's opinion in the postmortem report and oral testimony of the witnesses, the appellants have rightly been convicted.
9. We shall first deal with the oral evidence as to the distribution of *Prasad* containing poisonous substance.

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10. PW-1 Janmati Gond, sister of the deceased and PW-2 Kamla Bai, wife of the deceased were present in the house of deceased Lok Singh when appellant Patram met Lok Singh either in front of the house of Lok Singh or after Patram having entered his house. These three persons i.e. deceased Lok Singh, PW-1 Jagmati Gond and PW-2 Kamla Bai were given *Prasad* by appellant Patram. Lok Singh thereafter handed over a portion of the *Prasad* given to him to PW-9 Devkumari, aged about 7 years. While PW-1 Jagmati Gond and PW-2 Kamla Bai did not consume the *Prasad*, deceased Lok Singh consumed a bigger part of the *Prasad*, whereas, PW-9 Devkumari, started consuming the *Prasad*, however, finding its taste to be bitter, she immediately spitted it. Lok Singh having consumed some part of the *Prasad*, he started vomiting and was immediately taken to the hospital.

11. The statements of the above three star witnesses of the prosecution i.e. PW-1 Janmati Gond, PW-2 Kamla Bai and PW-9 Devkumari or any other witness would not throw much light as to where-from the *Prasad* was obtained by appellant Patram. There is no evidence either as to whether the *Prasad* given by appellant Patram to the deceased was handed over to him by appellant Navishchandra. It is only in the accused statement of appellant Patram, he speaks that he was handed over the *Prasad* by appellant Navishchandra. Thus, there is no evidence as to at which place or by whom the *Prasad* was prepared and what kind of poisonous substance was mixed with the *Prasad*.

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12. When deceased Lok Singh and PW-9 Devkumari were taken to Community Health Centre, Pendra Road, the deceased was treated by PW-7 Dr. Devendra Singh Paikra. In his treatment slip-Ex.P/18, Dr. Paikra has mentioned that the patient complains of vomiting. He also found frothing from the mouth of Lok Singh but his heart rate and pulse were normal. In another treatment slip recorded on 3.4.2010 by PW-7 Dr. Devendra Kumar Paikra, he has mentioned the word 'poisonous substance'. However, while submitting information -Ex.P/21 about death of the deceased, he informed the SO of Police Station, Pendra that the deceased died on account of 'unknown poisoning'. In another document relating to MLC, PW-7 Dr. Devendra Kumar Panika vide Ex.P/22 has used the words "case of poisoning". In the Postmortem Report-Ex.P/23, some food materials, some gastric juices and some smell was found but not identified. In the history of the deceased, it was mentioned that the deceased was received fit at CHC, Pendra in the night of 2.4.2010 for suspected poisoning and he died in the same night. The Autopsy Surgeon preserved viscera and handed over the same to the concerned Police Station for FSL examination, which was sent to the Forensic Science Laboratory vide Ex.P/16, but the charge sheet was filed without any FSL report and trial has also concluded without the report.

13. As earlier discussed, the Autopsy Surgeon has recorded the following in the conclusion part of the postmortem report :

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 "Findings suggestive intoxication, ingestion of some
 poisonous thing but cannot identified. The viscera
 preserved and sent to Forensic Laboratory to find out
 the cause of death after chemical analysis

Duration – 6-18 hrs prior to autopsy."

14. It is, thus, apparent that in none of the documents/reports filed by the prosecution, there is identification of the poison or its nature. When murder has been committed by making the deceased to consume any substance containing poison, it is the duty of the prosecution to prove that the accused persons had intentionally given such poisonous substance to the deceased and made him to consume to cause his death.

15. In such matters, it is always necessary for the prosecution to prove four important circumstances in case of poisoning in order to justify a conviction. These four circumstances are (1) a clear motive of the accused to administer poison; (2) deceased died of poison said to have administered; (3) accused had poison in his possession and; (4) accused had an opportunity to administer the poison to the deceased. The conviction on account of murder by poisoning is not possible merely because the accused had an opportunity to administer poison and consumption was found in the body of the deceased (**See Sharad Birdhichand Sarda Vs. State of Maharashtra (1984) 4 SCC 116**).

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16. In the case at hand, no poisonous substance has been recovered from the possession of appellant Patram or from appellant Navishchandra. There is also no confessional statement of appellant Patram or Navishchandra recorded under Section 27 of the Evidence Act for affecting the consequent seizure of the same *Prasad* containing poisonous substance, which was handed over by appellant Navishchandra to appellant Patram and then, by appellant Patram to deceased Lok Singh, PW-1 Jagmati Gond and PW-2 Kamla Bai. Thus, there is absolutely no proof that the appellants were possessed of any poisonous substance, which was handed over to the deceased to make him to consume the same.

17. The appellants must be acquitted on this ground alone. However, there being other important lacuna in the case of the prosecution, we deem it necessary to deal with those circumstances where the Prosecution has utterly and miserably failed to bring home the necessary facts before the trial Court for recording a finding of causing death by suspected poisoning.

18. PW-10 Dr. Hemant Kumar Tanwar has preserved viscera, which was in fact sent for FSL examination vide Ex-P/16. However, the FSL report was not produced before the trial Court. It is always considered solemn duty of the prosecution to produce all relevant materials before the trial Court so as to equip the Court with the necessary materials to conclude the trial with the best evidence.

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19. It is always considered to be a facet of fair investigation and fair trial that the evidence of all kinds be it modern scientific evidence in the nature of electronic evidence or Chemical Examiner's report are produced before the trial Court so as to enable it to record a finding of guilt or innocence, as the case may be.

20. Withholding of any evidence from the Court amounts to shirking of responsibility by the Prosecutor and failure to discharge the responsibility on the part of the Investigating Agency or the Public Prosecutor, has been dealt with sternly by the Supreme Court in the matter of **Chhotan Sao and Another Vs. State of Bihar, (2014) 4 SCC 54** in the following words in para 16:

“16. Before parting with the appeal, we wish to place on record our anguish regarding the inadequacy of investigation, the failure to discharge the responsibility on the part of the Public Prosecutor and the Magistrate who took cognizance of the offence under Section 304-B. The investigating officer who submitted the charge-sheet ought not to have done it without securing the viscera report from the forensic lab and placing it before the Court. Having regard to the nature of the crime, it is a very vital document more particularly in the absence of any direct evidence regarding the consumption of poison by the deceased Babita Devi. Equally the Public Prosecutor failed in his responsibility to guide the investigating officer in that regard. Coming to the

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Magistrate who committed the matter to the Sessions Court, he failed to apply his mind and mechanically committed the matter for trial. The Public Prosecutors and judicial officers owe a greater responsibility to ensure compliance with law in a criminal case. Any lapse on their part such as the one which occurred in the instant case is bound to jeopardise the prosecution case resulting in avoidable acquittals. Inefficiency and callousness on their part is bound to shake the faith of the Society in the system of administration of criminal justice in this country, which, in our opinion, has reached a considerably lower level than desirable.”

21. In **Chhotan Sao (supra)**, the Supreme Court was considering the validity of conviction under Section 304-B of IPC when the death had occasioned on account of suspected poisoning. Acquitting the accused, the Supreme Court held thus in para 12, 13 & 14 :

“12. No doubt the prosecution has adduced sufficient evidence to establish all other facts necessary to prove the offence under Section 304-B IPC except the cause of death. As seen from the trial Court judgment there are no injuries on the body of the deceased. Even according to the first information report the death was caused due to poisoning which the deceased was compelled to consume. In such circumstances, the non-examination of the doctor who conducted the post-mortem coupled with the failure to produce the forensic laboratory report regarding the examination of viscera of the deceased leaves a gaping hole in the case of the prosecution regarding the nature of the death of Babita Devi.

13. The learned counsel for the State placed reliance on the

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 decision of this Court in **Bhupendra V. State of MP**, to which one of us, Ranjana Prakash Desai, J. was a party. In the said case, no doubt this Court held that the production of chemical examination report is not mandatory. The Court held as follows :

"23. These decisions clearly bring out that a chemical examination of the viscera is not mandatory in every case of a dowry death; even when a viscera report is sought for, its absence is not necessarily fatal to the case of the prosecution when an unnatural death punishable under Section 304-B IPC or under Section 306 IPC takes place; in a case of an unnatural death inviting Section 304-B IPC (read with the presumption under Section 113-B of the Evidence Act, 1872) or Section 306 IPC (read with the presumption under Section 113-A of the Evidence Act, 1872) as long as there is evidence of poisoning, identification of the poison may not be absolutely necessary." (emphasis supplied)

On the facts of that case, this Court reached to the conclusion that there was sufficient evidence on record to come to the conclusion that the death was due to poisoning.

14. Coming to the case on hand, the conclusion recorded by both the courts below that Babita Devi died an unnatural death is not based on any legal material on record. None of the witnesses spoke to the factum of their witnessing Babita Devi consuming poison either under compulsion or otherwise. The statement in the FIR by PW 8 is based on hearsay evidence. Yaddu Sah of Gopalpur, on whose information PW 8 learnt about the

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death of Babita Devi, and who reported to the police, is not examined at the trial.”

22. In yet another case of murder by use of poisonous substance, the Supreme Court in the matter of **Jaipal Vs. State of Haryana, (2003) 1 SCC 169**, has held thus in para 23 to 26:

“23. Thus on the state of the evidence as it exists we cannot conclude positively that aluminum phosphide (celphos) was administered to the deceased. This finding has also to be read in the light of a very pertinent statement made by Smt. Beena. According to her, while the accused and the deceased were busy talking in the inner room, the witness was sitting just outside in the outer room. When she entered in the inner room Prakash Devi complained of feeling uneasy. She never stated that she was administered anything by the accused or anything given by the accused was consumed by the deceased or that anything which the deceased was made to consume by the accused was the cause of her feeling of uneasiness. On the contrary, it was in the presence of the witness Smt. Beena that the accused offered to give the deceased a tablet which could remove the feeling of uneasiness. Such tablet according to Smt. Beena was of two colors ; its half portion was blue and half portion was white. Such could not have been the colour of celphos tablet. If only the tablet given by the accused to the deceased was celphos it is not likely that the deceased would have consumed it inasmuch as the pungent smell of celphos would have alerted Prakash Devi and Smt. Beena and certainly the deceased would not have consumed the tablet. It also sounds unnatural, and therefore doubtful, if the accused would administer any poisonous tablet to the deceased by calling her to

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his house and at a point of time either when Smt. Beena was sitting just outside the room or when she was present inside the room. The presence of smell in the room, if any celphos tablet had remained in the open there would not have escaped the attention of Smt. Beena. But she does not depose to the presence of any smell in the room having been felt by her.

24. The forensic scientific examination of several organs of the body of the deceased and the samples collected from the body exclude the presence of aluminum phosphide (celphos). The victim, according to the prosecution case died within about 4 hours of the poison having been allegedly administered to her. Post-mortem was performed within 18 hours of the time of death. None of the symptoms suggesting administration of celphos as stated by Modi and the two authors Dr. Mitra Basu and Prof. S.B. Siwach were found to be present. The manner in which aluminum phosphide acts on being ingested, the presence of powder or symptoms of damage caused by phosphine must have been detected in the stomach, intestines, liver, kidney and gastric lavage. But none has been found. Merely because of the presence of foul smell it cannot be said to be a case of poison having been administered to the deceased. The finding of the trial Court and the High Court that the deceased died because of poisoning cannot therefore be sustained.

25. We are also not inclined to hold that the accused had the opportunity available to him of administering poison to the deceased. The availability of the second circumstance is also ruled out. So far as the question of motive is concerned, again, clear motive for the accused to cause the death of the deceased cannot be spelt out. The parties had separated and then

another reconciled. The accused was inclined to resume the conjugality of marriage. That is why he had insisted with his brother-in-law that his wife should join him. The deceased came to the accused accompanied by her sister-in-law. The husband and wife were talking to each other in the close presence of the wife's sister-in-law. There was no dispute or altercation between the two. In our opinion, the present one is not a case where it can be held that the accused had a clear motive for administering poison to the deceased. That apart, merely because the accused could have had a motive for causing the death of Prakash Devi it would not by itself be enough to sustain the finding of guilty against him.

26. There is no evidence adduced by the prosecution to hold that the accused had the poison in his possession prior to the time of the incident. The police had learnt from Smt Beena that the accused had taken out the tablet from a box and given it to the deceased for inhaling. The investigation was not directed towards inspecting and seizing the box wherefrom the tablet was taken out. Moreover, celphos is chalkish-white while the tablet which is said to have been given by the accused to the deceased was blue and white. In all probability, it could not have been celphos."

23. While relying on the judgments in the matters of **Chhotan Sao** and **Sharad Birdhichand (supra)**, we are following alike two earlier decisions of the Supreme Court in the matters of **Bhupinder Singh V. State of Punjab, (1988) 3 SCC 513** and **Anant Chintaman Lagu Vs. State of Bombay, AIR 1960 SC 500.**

24. In the matter of **Bhupinder Singh (supra)**, it has been held that

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there may be very many facts and circumstances proved against the accused which may call for tacit assumption of the factum of possession of poison with the accused, and therefore, the insistence on proof of presence of poison with the accused is neither desirable nor practicable.

25. Similarly, in **Anant Chintaman Lagu (supra)**, the conviction was upheld despite absence of a decisive finding as to the exact cause of death and on a finding that the death of the victim was the result of the administration of some unrecognized poison or drug which would act as a poison. The conviction was upheld because circumstantial evidence in the context of the case was considered to be a combination of facts creating a network through which the accused has no escape because the facts taken as a whole do not admit of any inference but of his guilt. The above was a case where the accused was charged for committing murder of his wife and his conduct after death of his wife was unusual and abnormal.

26. In the case at hand, the alleged "motive" attributed to appellant Navishchandra of cultivating the land belonging to his father, which earlier belonged to PW-1 Janmati, was purchased about 8-10 years back. There is evidence that civil litigation is going on between the parties. It is also clear that appellant Navishchandra has been in possession of the land for last about 8-10 years. There is no oral evidence involving appellant Navishchandra preparing the poisonous substance nor

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anybody has seen Navishchandra handing over the poisonous substance to appellant Patram. Again, there is no evidence against both the appellants which may constitute the secret characters of a criminal conspiracy. Nobody has seen them meeting together and conspiring to eliminate the deceased. On the contrary, there is evidence in the statement of Janmati Gond (PW-1) at para 9 of her statement that appellant Patram had amicable relations with deceased Lok Singh and both used to visit each other's house. Thus, if there is no criminal conspiracy, there was no adhering reason or motive for appellant Patram to handover *Prasad* containing poisonous substance to deceased Lok Singh. Moreover, PW-9 Devkumari, a victim, had also allegedly consumed the *Prasad* but she was treated only for food poisoning and was immediately discharged from CHC, Pendra Road after administering First Aid.

27. In the light of the evidence discussed above, we have no hesitation in holding that there is absolutely no material against the appellants to record a finding that they had conspired to eliminate the deceased and in execution of the said conspiracy, they handed over *Prasad* containing poisonous substance to the deceased and committed his murder.

28. Accordingly, the appeals are allowed and the impugned judgment of conviction and sentence is set-aside. Appellant Navishchandra @ Navishchandra Yadav is on bail and appellant Patram Yadav is in jail. Appellant Patram Yadav be released

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forthwith if not required in any other case, on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. The bail bonds of both the appellants shall remain in operation for a period of 6 months as required under Section 437A of Cr.PC. Both the appellants shall appear before the higher Court as and when directed.

29. Before parting, it is necessary to issue certain directions to the Prosecution Agency as well as to the trial Court to ensure filing of the FSL report before filing of the charge sheet or at least before committal of the case for Sessions trial.

30. The Director (Prosecution) shall ensure obtaining the FSL report in all cases so as to include the same in the charge sheet.

31. It will be the duty of the Committal Court to ensure filing of all the necessary papers by the Prosecution within reasonable time, before committal of the case. However, committal proceedings shall not be unnecessarily delayed on the pretext of lack of papers.

Sd/-

(Prashant Kumar Mishra)

Judge

Sd/-

(Gautam Chourdiya)

Judge