

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.81 of 2014

Arising Out of PS. Case No.-42 Year-2012 Thana- BATHNAHA District- Sitamarhi

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1. Deoki Rai, S/o Bechan Rai, R/o Village Bathnaha, P.S. Bathnaha, District- Sitamarhi.
 2. Bechan Rai, S/o Late Manchit Rai, R/o Village Bathnaha, P.S. Bathnaha, District- Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pushpendra Kumar Singh, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 18-02-2020

Heard Mr. Pushpendra Kumar Singh, learned counsel for the appellants and Mr. Dilip Kumar Sinha, learned counsel for the State.

2. This appeal is directed against the judgment of conviction and order of sentence dated 09.01.2014 and 15.01.2014 respectively passed in Sessions Trial No. 359 of 2012/73 of 2013 by the learned *Adhoc* Additional Sessions Judge-I, Sitamarhi, whereby the appellants after being found guilty for the offence punishable under Section 302 read with section 34 of the Indian Penal Code have been sentenced to undergo rigorous imprisonment for life and a fine of Rs.



10,000/- each and in default of payment of fine to undergo further imprisonment for a period of six months.

3. The prosecution case is based on the *fardbeyan* of one Ram Nandan Rai, resident of Village Bahusar, P.S. Nanpur, District – Sitamarhi recorded by the Assistant Sub-Inspector of Police, Rajeev Ranjan of Bathnaha Police Station on 13.04.2012 at 2:15 P.M. wherein he has stated that his daughter Chandra Kala Devi was married to Deoki Rai, son of Bechan Rai, resident of village- Bathnaha, P.S.- Bathnaha, District- Sitamarhi as per Hindu rites and customs about eight years ago. After marriage, Deoki Rai was not allowing his wife to go to her *Maika* and during the entire married life of 8 years, she was allowed to visit her *Maika* only twice. About 8 days back, he visited Bathnaha for *rokshadi* of his daughter, but she was not allowed to go with him by her husband and father-in-law. About 4 days prior to the incident, the nephew (*Bhagina*) of her father-in-law brought a kidnapped girl to his village, but he refused to provide them shelter and protection. Thereafter, the girl was taken to the house of one Budhani Devi, wife of late Bhajan Rai of his village. After two days, when he visited the house of his daughter, her husband and her father-in-law misbehaved with him. Two days later, Budhani Devi visited



Bathnaha, her *Maika* and, on 11.04.2012, she returned back to Bahurar. She told his brother Radha Rai that luckily your brother came back alive otherwise he would have been killed. He has further stated that on the very next day, i.e. on 12.04.2012, in the night, his daughter was killed. The information of her murder was communicated to him on 13.04.2012 at about 8:00 A.M. through the district administration. He has further stated that his daughter used to tell him that she was being regularly told to bring something from her *Maika*. He has stated that he is sure that his daughter has been killed by Deoki Rai, Bechan Rai and Marni Devi for non-fulfillment of demand of dowry. The recorded *fardbeyan* of Ramanandan Rai was witnessed by Chandrika Rai and Arun Rai.

4. On the basis of the aforesaid *fardbeyan*, the Officer-in-Charge of Bathnaha police station, namely Bishnudeo Paswan registered first information report (for short 'FIR') on 13.04.2012 at 2:30 P.M. under Section 302 read with section 34 of the Indian Penal Code against the appellants Deoki Rai and Bechan Rai and one Marni Devi and took up the investigation himself.

5. On completion of investigation, the investigating



officer submitted charge-sheet under Section 302 read with section 34 of the Indian Penal Code against the appellants. Since co-accused Marni Devi was found innocent during investigation, she was not sent up for trial.

6. On receipt of the police report submitted under Section 173 (2) of the Code of Criminal Procedure, the learned Chief Judicial Magistrate took cognizance of the offence.

7. After complying with the mandatory provisions, as prescribed under Section 207 of the Code of Criminal Procedure, the learned Chief Judicial Magistrate committed the case to the Court of Sessions for trial.

8. After consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the trial court framed charge under section 302 read with section 34 of the Indian Penal Code against the appellants to which they pleaded not guilty and claimed to be tried. Accordingly, the trial commenced.

9. In order to prove its case, the prosecution examined altogether 10 witnesses. They are P.W. 1, Ram Nandan Rai, P.W. 2 Arun Kumar Rai, P.W. 3 Bijli Rai, P.W. 4 Sudhir Yadav, P.W. 5 Chandrika Rai, P.W. 6 Arun Kumar Singh,



P.W. 7 Birendra Paswan @ Bulindra Paswan, P.W. 8 Chandrika Devi @ Sangeeta Devi, P.W.9 Bishundeo Paswan and P.W. 10 Dr. Prem Pushp Lohiya.

10. Apart from the oral testimony of the aforesaid witnesses, the prosecution also proved signature of Chandrika Rai over *Fardbeyan* (Exhibit-1), Formal F.I.R. (Exhibit-2), *Fardbeyan* (Exhibit-3) and the Postmortem Report (Exhibit-4).

11. After closure of the prosecution case, the trial court put forth the incriminating circumstances which transpired in the prosecution evidence against the appellants in order to enable them to personally submit their explanation. In reply, the appellants pleaded their innocence.

12. However, no witness was examined on behalf of the defence.

13. Having appreciated the evidences adduced during trial, the trial court convicted the appellants for the charge under Section 302 read with section 34 of the Indian Penal Code and sentenced them in the manner stated herein above.

14. Mr. Pushpendra Kumar Singh, learned counsel appearing on behalf of the appellants submitted that the trial court did not appreciate the evidence adduced during trial



properly. He submitted that the witnesses examined on behalf of the prosecution including the informant did not support the prosecution case. He contended that the earliest version received by the police regarding the commission of the offence has been deliberately suppressed. He urged that the withholdment of the information on the basis of which the police swung into action has seriously prejudiced the case of the defence. He argued that it is a peculiar case in which the police conducted the investigation first and after inspecting the place of occurrence, preparing the inquest report and sending the body of the deceased for autopsy recorded the *fardbeyan* and instituted the FIR. According to him, in absence of any legal evidence against the appellants, the trial court ought to have recorded judgment of acquittal in favour of the appellants, but erroneously it passed the judgment of conviction.

15. *Per contra*, Mr. Dilip Kumar Sinha, learned counsel appearing for the State submitted that there is neither any perversity nor any illegality in appreciation of the evidence by the trial court. According to him, since the informant's daughter was killed in other than natural circumstances in her *Sasural*, the trial court rightly held the appellants responsible for the commission of murder. He contended that primarily, it was



the responsibility of the husband to explain under what circumstance his wife died. Since he has failed to give any reasonable explanation, the trial court was fully justified in holding the appellants guilty for the charge under Section 302 read with section 34 of the Indian Penal Code.

16. We have heard learned counsel for the parties and carefully perused the evidence on record. In order to appreciate the rival submission, we would like to take into consideration the evidence of the witnesses examined during trial.

17. P.W. 1 Ram Nandan Rai, who is the informant of the case, has stated in his deposition that his daughter Chandra Kala Devi and the appellant Deoki Rai got married eight years ago. After her *Bidai*, she was living in her matrimonial home where she was killed. In this regard, he received information from the villagers of her *Sasural*, whereafter he went to her *Sasural* along with one Chandrika Rai and Sudhir. He has further stated that he had instituted the case merely on suspicion.

18. In cross-examination, he admitted that the *fardbeyan* recorded by the police officer was neither read over nor explained to him. He admitted that no body had disclosed



him that his daughter was killed by the accused persons. He also admitted that the son of his daughter Santosh lives with his grand parents. He further admitted that his daughter was feeble minded and quite often she used to leave her matrimonial home regarding which he was being regularly informed. He has further admitted that when he went to her *Sasural*, the residents of the locality disclosed him that his daughter had gone out of her matrimonial home alone in the night on 12.04.2012. He denied the defence suggestion that he had falsely deposed before the court.

19. So far as P.W. 2 to P.W. 8 are concerned, they have not supported the case of the prosecution in any manner. They all were declared hostile by the trial court at the request of the prosecution. They were subjected to cross-examination by the prosecution. However, nothing could be taken out by the prosecution from them to its advantage.

20. The remaining two witnesses are the official witnesses, i.e. P.W. 9 Bishundeo Paswan (Investigating Officer) and P.W. 10 Dr. Prem Pushp Lohiya, the doctor, who conducted the *Postmortem* examination on the body of the deceased.

21. P.W. 9 Bishundeo Paswan has proved his own writing on the formal F.I.R., which has been marked as Exhibit-



2 and the *fardbeyan*, which has been marked as Exhibit-3. Similarly, Dr. Prem Pushp Lohiya has proved the Postmortem Report, which has been marked as Exhibit-4.

22. In cross-examination, P.W. 9 has admitted that he had arrived at the place of occurrence at 8:15 P.M.. He admitted that the inquest report of the deceased was prepared by the Assistant Sub-Inspector of Police, namely, Rajeev Ranjan at 8:15 A.M. on 13.04.2012 on which he had put his signature. He admitted that he had sent the body for the postmortem examination at 08:30 A.M. on 13.04.2012. Having said so, he admitted that the *fardbeyan* of the informant was recorded at 2:15 P.M. on 13.04.2012. He admitted that he had inspected the place of occurrence and the body of the deceased was found about two kilometer North West from the Bathnaha Police Station in the field of one Prabhu Rai.

23. P.W. 10 Dr. Prem Pushp Lohiya has stated in his deposition that on 13.04.2012 he was posted at Sadar Hospital, Sitamarhi as Medical Officer. On that day, he conducted postmortem examination on the body of the deceased Chandra Kala Devi at 2:05 P.M. and found the following *ante mortem* injuries :-

i) *Incised wound 4" x 1/2" x muscle deep over upper part of neck. Trachea was cut into two*



pieces over upper part of neck. Strap muscles on major vessels cut on both sides and

ii) Incised wound 3" x 1/2" x muscles deep one inch below above wound.

24. He has stated that in his opinion the cause of death was haemorrhage and shock leading to cardiac respiratory failure as a result of above mentioned injuries caused by sharp cutting instrument. He has stated that the dead body was identified by the Choukidar-1/4 Harendra Paswan and 1/3 Sitaram Mukhia.

25. In cross-examination, he has admitted that no requisition for conducting postmortem examination was received from the police. He also admitted that no Police Station case number is mentioned on the postmortem report.

26. From a conjoint reading of the evidence of P.W. 9 and P.W. 10, it would be manifest that on an information received at the Bathnaha Police Station, the Assistant Sub-Inspector of Police, Rajeev Ranjan and the Officer-in-Charge of Bathnaha police station, Bishundeo Paswan had reached at the place of occurrence at about 8:00 A.M., the inquest report of the deceased was prepared by the Assistant Sub-Inspector of Police Rajeev Ranjan at 8.15 A.M., the body of the deceased was sent to the Sadar Hospital, Sitamarhi with two Chaukidars, namely,



Harendra Paswan and Sitaram Mukhiya, the postmortem examination on the body of the deceased was conducted by P.W. 10 Dr. Prem Pushp Lohiya at 2:05 P.M. and, thereafter, the *fardbeyan* was recorded at 2:15 P.M. on 13.04.2012 on the basis of which the FIR was registered at 2:30 P.M. on 13.04.2012.

27. From the above discussions, it would be evident that the informant Ram Nandan Rai (P.W. 1) has not supported the allegations made in the FIR against the appellants. In his deposition, he has not whispered a word against the appellants. His deposition would simply show that his daughter was killed in her sasural village after eight years of her marriage. He has neither supported the allegation of demand of dowry nor of cruelty being meted out upon his daughter in her matrimonial home at the hand of the appellants. He has admitted that the case against the appellants was instituted merely on suspicion. He has further admitted that his daughter was feeble minded and was in the habit of going out of her matrimonial home without any information to anyone for which he was being informed by the appellants. He also admitted that a day prior to the institution of the FIR, in the night, his daughter had gone out of her matrimonial home.

28. P.W. 1 has not been declared hostile by the



prosecution. Hence, his evidence would be binding on the prosecution.

29. The other independent witnesses, i.e. P.W. 2 to P.W.8 have not supported the case of the prosecution in any manner. They all have been declared hostile.

30. The well settled law on the treatment of a hostile witness is that the evidence of such a witness should not be completely rejected only because he has turned hostile. The Supreme Court in its various Judgments has held that declaration of a witness to be hostile does not *ipso facto* reject the evidence. The portion of evidence being advantageous to both the parties may be taken advantage of, but the court before whom such a reliance is placed shall have to be extremely cautious in such acceptance.

31. In *State of U.P. V. Ramesh Prasad Mishra & Anr. [AIR 1996 SC 2766]*, the Hon'ble Supreme Court held that :

“It is usually well settled Law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but it can be subjected to close scrutiny and that portion of the evidence which is



consistent with the case of the prosecution or defence may be accepted.”

32. In the instant case, after declaring P.W. 2 to 8 hostile, the trial court provided opportunity to the prosecution to cross-examine them.

33. However, even in their cross-examination, nothing could come out to be used for the benefit of the prosecution. No part of their testimony is found to be creditworthy. The cross-examination of P.W. 2 to 8, as a matter of fact, does not inspire confidence or evolve presumptions to the guilt of appellants.

34. We have seen, hereinabove, that an information had reached to the police much before recording of the *fardbeyan* on the basis of which the police proceeded to the place of occurrence. The preparation of the inquest report of the deceased, sending the body of the deceased to the Sadar Hospital for postmortem examination and commencement of the postmortem examination were done much before recording of the *fardbeyan*. The manner in which the police drew the formal FIR pursuant to recording of the *fardbeyan* makes the FIR a suspicious document. The investigation was done in a lackluster



manner. However, it is settled law that only defective investigation cannot be the sole ground to reject the prosecution case, if it stands proved on the basis of the direct evidence available on record. It is also a settled law that in a case of a defective investigation, the court has to be circumspect in evaluating the evidence.

35. In *Ajay Kumar Singh Vs. Flag Officer Commanding-in-Chief & Others* reported in *[(2016) 9 SCC 179]*, the Hon'ble Supreme Court observed as under:-

“The evidence adduced by the prosecution must be scrutinized independently of such lapses either in the investigation or by the prosecution or otherwise, the result of the criminal trial would depend upon the level of investigation or the conduct of the prosecution. Criminal trials should not be made casualty for such lapses in the investigation or prosecution.”

36. However, in the instant case, there is no direct evidence available on record even remotely connecting the appellants in any manner with the alleged offence. In absence of any direct evidence against the appellants, the defective investigation of the case makes the whole prosecution case absolutely unbelievable specially when the body of the deceased was not found inside her matrimonial home. There cannot be



any presumption of facts within special knowledge of the appellants, as the death was not caused inside the house.

37. The investigating officer had admitted in his deposition that the body of the deceased was found from the field of one Prabhu Rai and the informant himself has stated in his deposition that the victim was feeble minded and was in the habit of going out of the matrimonial home and on the fateful night also she went out of her matrimonial home without informing anyone. The informant has also stated in his deposition that the in-laws of her daughter always used to inform him whenever she left her matrimonial home without disclosing anything to anyone. Under such circumstance, if the victim was killed and nobody had witnessed the killing, by no stretch of imagination, the appellants could have been held guilty for the crime.

38. The medical evidence of P.W. 10 itself would not establish the guilt of the appellants, as the doctor is not supposed to speak on other related matters. His evidence would simply establish that the deceased was killed and on her body certain injuries were found. The expert opinion in itself would not be sufficient to hold the appellants guilty for the offences under which they were charged.



39. In view of the discussions made above, we are of the opinion that in the absence of any legal evidence, the trial court has convicted the appellants and sentenced them to undergo imprisonment for life. The impugned judgment passed by the trial court being perverse cannot be sustained.

40. Accordingly, the impugned judgment of conviction dated 09.01.2014 and order of sentence dated 15.01.2014 passed by the trial court in Sessions Trial No. 359 of 2012/73 of 2013 are set aside. Consequently, the appellants are acquitted of the charge under Section 302 read with section 34 of the Indian Penal Code.

41. Since appellant no.2 Bechan Rai is on bail, he is discharged from the liabilities of the bail bonds. The appellant no.1 Deoki Rai, who is in custody, is directed to be released forthwith, if not required in any other case.

42. The appeal stands allowed.

(Ashwani Kumar Singh, J)

(Arvind Srivastava, J)

shailendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
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