

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.386 of 1996**

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Sita Ram Paswan, son of Ramdeo Paswan, resident of village Bandhwa, P.S.-  
Deokund, District- Aurangabad

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

**Appearance :**

|                      |   |                                                                                                           |
|----------------------|---|-----------------------------------------------------------------------------------------------------------|
| For the Appellant/s  | : | Mr. Krishna Prasad Singh, Sr. Advocate<br>Ms. Meena Singh, Advocate<br>Ms. Surya Nilambari, Amicus Curiae |
| For the Respondent/s | : | Mr. Bipin Kumar, APP                                                                                      |

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**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH**

**and**

**HONOURABLE MR. JUSTICE CHANDRA PRAKASH**

**SINGH**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)**

**Date : 12-08-2022**

The present appeal has been preferred against the judgment of conviction dated 08.08.1996 and order of sentence dated 12.08.1996 passed by the 3<sup>rd</sup> Additional Sessions Judge, Aurangabad in Sessions Trial No.27 of 1995/ 3 of 1995 arising out of Deokund P.S. case No.35 of 1994, whereby and whereunder sole appellant Sita Ram Paswan has been convicted under Sections 302 and 201 of the Indian Penal Code and has been sentenced to undergo imprisonment for life for the offence under Section 302 of the Indian Penal Code and rigorous imprisonment for 5 years for the offence under Section 201 of the Indian Penal



Code and both the sentences of the appellant have been directed to run concurrently.

2. By order dated 26.07.2022, Ms. Surya Nilambari was appointed as Amicus Curiae to assist the Court as none had appeared for the appellant on that date. However, today, the learned counsel for the appellant is present.

3. It is the case of the prosecution that the fardbeyan of the informant Urmila Devi was recorded wherein she stated that she was sleeping in her bed room along with her daughter in the night of 16-17.08.1994. Her sister Parmila Devi (deceased) was sleeping in the southern room. At about 2 A.M., when she heard the sound of crying, then she woke up and came out of her room in the courtyard and thereafter she saw that Ramdeo Paswan (father-in-law of informant), Kamla Paswan (elder brother of husband of informant), Sitaram Paswan (younger brother of husband of informant), the present appellant, namely, Bhajuman Paswan (Maternal uncle of husband of informant) and Umesh Paswan (younger brother of husband of informant) were present in the southern room. Further the informant stated that Sitaram Paswan and Kamla Paswan both were pressing the neck of the deceased and Ramdeo Paswan and Umesh Paswan were catching hold of her legs. When she saw the incident, she raised an alarm,



after which her father-in-law and mother-in-law caught hold of her and told her to shut the mouth and her father-in-law pushed her in the room and bolted it from outside. The informant further stated in her fardbeyan that from the crack between the doors she saw that all the above named accused persons were taking away the dead body of the deceased. In the morning, her door was opened and when she enquired about the deceased, her mother-in-law informed her that nothing could be done now and no purpose will be served by weeping. It is alleged by the informant that the motive of the occurrence was that the appellant used to tell the deceased that she was not beautiful, so he would kill her. Further, it is alleged that the appellant was in love with one girl and due to this reason, he committed the murder of the deceased and disappeared her dead body. It was further alleged that the informant and her sister Parmila Devi (deceased) were married at the same time about eight years ago.

4. After investigation, the police submitted charge sheet and cognizance was taken by the jurisdictional Magistrate and thereafter the case was committed to the Court of Sessions. Charges were framed against the accused persons, namely, Ramdeo Paswan, Sitaram Paswan (the present appellant), Umesh Paswan, Bhajuman Paswan, Kamla Paswan and Birja Devi under



Sections 302/34 and 201 of the Indian Penal Code. The accused persons including the appellant, pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined altogether eight witnesses, namely, Mathura Paswan (P.W.1), Sahdeo Paswan (P.W.2), Parmeshwar Ram (P.W.3), Urmila Devi (P.W.4), Balo Devi (P.W.5), Faodari Paswan (P.W.6), Surendra Paswan (P.W.7) and Mahendra Paswan (P.W.8). P.W.1, P.W.2, P.W.4 (the informant of the case) and P.W.6 have been declared hostile by the prosecution. Further P.W.5 has been tendered by the prosecution. The prosecution has brought on record only one exhibit which is the F.I.R. marked as Ext.-I in order to support its case.

6. From the perusal of the order sheet, it appears to the Court that the statement of the appellant was recorded by the learned trial court under Section 313 of Cr.P.C. for the first time on 30.04.1996. On further perusal of the order sheet, it appears to the Court that on 25.06.1996 the learned A.P.P. filed a petition to mark the formal F.I.R. as Exhibit, which was allowed by the trial court and thereafter the trial court ordered the accused persons including the present appellant to be further examined under Section 313 of Cr.P.C. on 28.06.1996. Therefore, the appellant was further examined for second time on 28.06.1996.



7. Heard learned senior counsel for the appellant and learned APP for the State.

8. It is the case of the appellant before this Court that the prosecution has failed to prove the place and manner of occurrence beyond all shadow of reasonable doubt. It is further submitted that except for the informant, there is no eye witness to the alleged occurrence and the informant, who claimed herself to be eye witness, has been declared hostile. Further P.W.3, P.W.7 and P.W.8 are only hearsay witness and, thus, their evidence cannot be relied upon to sustain the conviction of the appellant. It is also contended that non-examination of the Investigating Officer has prejudiced the case of the appellant. Further learned counsel for the appellant submits that as per the evidence of P.W.3, the father of the deceased, he was informed by one Kameshwar Baheliya that his daughter has been done to death by the accused persons including the appellant. But the said Kameshwar Baheliya has not been examined by the prosecution. Further the learned counsel for the appellant pointed out to the Court that there is material contradiction in the deposition of P.W.3 stated in paragraphs 15, 18, 19 and 20 of the said deposition. It is further contended by the learned senior counsel that the content of the F.I.R., the signature in the F.I.R. and the



thumb impression have not been proved by the prosecution. It is further submitted that due to the failure of the prosecution to prove the commission of offence against which the appellant has been charged, the conviction of the appellant under Section 201 of the Indian Penal Code cannot be sustained.

9. Learned APP for the State has submitted that the judgment of conviction and order of sentence under challenge requires no interference as the prosecution has been able to prove its case beyond all reasonable doubts. From the evidence, which has been adduced by the prosecution, the guilt of the appellant is satisfactorily proved and there is no infirmity in the judgment of conviction and order of sentence rendered by the trial court.

10. After hearing the arguments advanced by the learned counsels appearing for the parties and perusing the materials available on record, following issues arise for consideration in this appeal:-

(i) Whether the evidence adduced by the informant (P.W.4) could be relied upon to sustain the conviction of the appellant?

(ii) Whether the deposition of P.W.3, P.W.7 and P.W.8 read as a whole is truthful and inspire confidence and can be relied upon to sustain the conviction of the appellant?



(iii) Whether the non-examination of Investigating Officer has prejudiced the trial of the appellant?

(iv) Whether the prosecution has been able to prove the place of occurrence and manner of occurrence beyond reasonable doubt?

(v) Whether the offence under Section 201 of the Indian Penal Code has been proved beyond reasonable doubt by the prosecution in order to convict the appellant?

11. Now adverting to the first issue, from perusal of the record, it appears that the informant of the present case has been declared hostile by the prosecution. In respect to the evidentiary value of the hostile witness, the Hon'ble Supreme Court in ***Tulsiram v State (2010) 4 SCC (Cri) 439*** has observed that :-

*“It is well settled that there is need to discard the entire statement of a hostile witness. But where the prosecution case depends on the statement of a witness who ultimately turns hostile and thereby changes the initial case totally, the benefit of it would go in favour of the accused.”*

Therefore, in respect to the present facts and circumstances of the case, this Court has come to the conclusion that the informant being declared hostile and having deposed against the initial case, her statement must be discarded in totality and,



therefore, it could not be relied upon to sustain the conviction of the appellant.

12. Now adverting to the second issue, from perusal of the deposition of the P.W.3 in his examination-in-chief, the witness deposed in paragraph No.1 that one Kameshwar Baheliya of village Bandhwa came and informed him that her daughter had been done to death by the accused persons including the appellant. P.W.3 has further stated in the aforesaid paragraph that when he reached the house, the informant was weeping and the informant narrated him about the incident, wherein she was sleeping with her child in the western room and Sitaram and Ramdeo were beating Pramila (deceased). On hearing cry, she went to the courtyard and when she reached there, she tried to protect the deceased but she was pushed in the room and was told to shut her mouth. Further she stated to P.W.3 that from the crack between the door she saw that the accused persons including the appellant took the body of the deceased and thereby disappeared the body. But in his cross-examination in paragraph 18, P.W.3 stated that Kameshwar Baheliya only informed him about the death of her daughter. He further stated that it is not true that Kameshwar Baheliya had informed him that her daughter was done to death by the said accused persons including the appellant. He further stated



in paragraph 20 of his cross-examination that it is not true that people of the place, where the deceased was married, had murdered her and caused her dead body to disappear. It appears from the cross-examination, as stated in paragraph 19, wherein P.W.3 has stated that he had not stated before the police that the informant told him that when the informant tried to protect the deceased, she was said to keep the mouth shut and was pushed to the room which was locked from outside. Further P.W.3 stated that he had also not stated before the police that the informant was peeking through the crack of the door and saw that the above named persons were taking away the dead body of the deceased on cot and thereafter disappeared the dead body. Therefore, it is evident from the deposition that for the first time this fact has been revealed by him during trial and, as such, the statements cannot be relied upon to sustain the conviction of the appellant. Further in view of such material contradictions arising out of paragraph Nos.1, 18 and 20 of the deposition of the said witness, it does not inspire confidence of the Court to sustain the conviction of the appellant. Further P.W. 3, P.W.7 and P.W.8 are hearsay witnesses. In respect of evidentiary value of hearsay evidence, the Hon'ble Supreme Court in ***Kalyan Kumar Gogoi vs***



*Ashutosh Agnihotri and another (2011) 2 SCC 532* observed that:-

*“It is a fundamental rule of evidence under the Indian Law that hearsay evidence is inadmissible.”*

Therefore, the evidence deposed by P.W.3, P.W.7 and P.W.8 being hearsay in nature, the said evidence is inadmissible in the eye of law.

13. Now coming to the third issue, due to the non-examination of the Investigating Officer in the present circumstances, the prosecution has not been able to prove the place of occurrence, manner of occurrence, the signature bearing on the F.I.R., the thumb impression of the informant bearing on F.I.R., which has been deposed by the informant to be taken on blank paper and the contents of the F.I.R., which has been marked as Exhibit-1, thereby it has caused great prejudice to the appellant. The appellant has not been able to elicit anything regarding the place of occurrence and inquest report as the Investigating Officer has not been examined.

14. Now adverting to the fourth issue, in view of the non-admissibility of the evidence of P.W.1, P.W.2, P.W.4 (the informant of the case) and P.W.6 having been declared hostile by the prosecution, P.W.5 being tendered by the prosecution, the



material contradiction arising out of the deposition of P.W.3, the evidences of P.W.3, P.W.7 and P.W.8 being hearsay in nature, the non-examination of the Investigating Officer, the prosecution has miserably failed to prove the place of occurrence and manner of occurrence beyond reasonable doubts.

15. Now coming to the fifth issue, it is apparent from the record that the place of occurrence and manner of occurrence as discussed above have not been proved by the prosecution. Further the dead body of the deceased has not been recovered. Therefore, the commission of the offence under Section 302 of the Indian Penal Code has not been proved. The Hon'ble Supreme Court in ***Palvinder Kaur Vs. The State of Punjab (AIR 1952 SC 354)*** has observed that:-

*“In order to establish the charge under section 201, Indian Penal Code, it is essential to prove that an offence has been committed - mere suspicion that it has been committed is not sufficient – that the accused knew or had reason to believe that such offence had been committed and with the requisite knowledge and with intent to screen the offender from legal punishment causes the evidence thereof to disappear.....”*

Therefore, in view of the failure of the prosecution to prove the commission of the offence, the conviction of the appellant under Section 201 of the Indian Penal Code cannot be sustained.

16. On the basis of the findings arrived at on the issues formulated above and the judgments referred, we are of the



considered opinion that the conviction of the appellant is not sustainable as there is no conclusive evidence to prove the guilt of the appellant. The prosecution has failed to prove its case beyond all reasonable doubts.

17. Accordingly, the present appeal is allowed. The judgment of conviction dated 08.08.1996 and order of sentence dated 12.08.1996 passed by the 3<sup>rd</sup> Additional Sessions Judge, Aurangabad in Sessions Trial No.27 of 1995/ 3 of 1995 arising out of Deokund P.S. case No.35 of 1994 is, hereby, set aside. Since the appellant is on bail, he is discharged from the liabilities of his bail bonds.

18. We cannot part away with this appeal without recording our words of appreciation for the strenuous effort put by Ms. Surya Nilambari, learned advocate appointed as Amicus Curiae.

**(Sudhir Singh, J)**

**( Chandra Prakash Singh, J)**

Pankaj/-

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