

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.419 of 2015

Arising Out of PS. Case No.-161 Year-2009 Thana- GOPALGANJ TOWN District-
Gopalganj

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Pappu Singh S/o Vidyanand Singh, R/o Jai Prakash Nagar, Thana Road
Gopalganj, Ward No. 20, P.S. and District Gopalganj.

... .. Appellant

Versus

The State Of Bihar Respondent

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with
CRIMINAL APPEAL (DB) No. 440 of 2015

Arising Out of PS. Case No.-161 Year-2009 Thana- GOPALGANJ TOWN District-
Gopalganj

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Ravindra Prasad s/o Sri Baidyanath Prasad, r/o village- Arar, P.S.- Gopalganj,
District- Gopalganj.

... .. Appellant

Versus

The State Of Bihar Respondent

=====

with
CRIMINAL APPEAL (DB) No. 556 of 2015

Arising Out of PS. Case No.-161 Year-2009 Thana- GOPALGANJ TOWN District-
Gopalganj

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Sweta Devi W/o Late Sudhir Kumar Resident of Mohalla Saraiya Ward No. 3,
Yadopur Chowk, Police Station and District Gopalganj.

... .. Appellant

Versus

The State Of Bihar Respondent

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Appearance :
(In CRIMINAL APPEAL (DB) No. 419 of 2015)
For the Appellant/s : Mr. Jagnath Singh, Advocate
For the Respondent/s : Mr. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 440 of 2015)
For the Appellant/s : Mr. Sanjay Singh, Sr. Advocate
For the Respondent/s : Mr. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 556 of 2015)
For the Appellant/s : Mr. Amish Kumar (Amicus Curiae)
For the Respondent/s : Mr. Shashi Bala Verma, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT



(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 21-12-2022

Since same judgment and order of the Trial Court is being assailed in all these three appeals, they have been heard together and are being disposed of by the present common judgment and order.

2. These appeals have been preferred by the appellants assailing the impugned judgment of conviction dated 16.05.2015 and order of sentence dated 20.05.2015, passed by the learned District & Sessions Judge, Gopalganj, in Sessions Case No. 382 of 2014/Registration No. 823 of 2014, whereby the appellants have been convicted and sentenced as under:

Appellant's name	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
CRIMINAL APPEAL (DB) No.419 of 2015				
Pappu Singh	302/34 of the Indian Penal Code	R.I. for life	-	-
CRIMINAL APPEAL (DB) No. 440 of 2015				
Ravindra Prasad	302/34 of the Indian Penal Code	R.I. for life	-	-
CRIMINAL APPEAL (DB) No. 556 of 2015				
Sweta Devi	302/34 of the Indian Penal Code	R.I. for life	-	-

3. We have heard, Mr. Jagnath Singh, learned counsel



for the appellant in Criminal Appeal (DB) No. 419 of 2015, Mr. Sanjay Singh, learned Senior Counsel for the appellant in Criminal Appeal (DB) No. 440 of 2015. As there was no representation on behalf of the appellant despite repeated calls in Criminal Appeal (DB) No. 556 of 2015, this Court had requested Mr. Amish Kumar, a learned Advocate of this Court, to appear as an *Amicus Curiae* for placing the case of the appellant, Sweta Devi of the said Criminal Appeal. Mr. Amish Kumar has rendered a valuable assistance and has ably placed before this Court, the case of the appellant Sweta Devi of Criminal Appeal (DB) No. 556 of 2015. Ms. Sashi Bala Verma, learned Additional Public Prosecutor has made her submissions on behalf of the State in all the three cases.

4. It would be in the fitness of the things to briefly notice at the outset certain basic facts leading to registration of the concerned First Information Report (F.I.R. for brevity) i.e. Gopalganj P.S. Case No. 161 of 2009. A UD (Unnatural Death) case no. 4 of 2009 was initially registered on 14.08.2009, by Ramayan Ram, a Sub-Inspector of Police, town police station, Gopalganj, (PW-16), based on the *fardbeyan* of the father of the deceased, Bijendra Kishore Prasad (PW-4), wherein it was stated that his son, Sudhir Kumar (the deceased), aged nearly 35



years, had committed suicide by hanging. However, during the course of investigation based on incriminating circumstances, statements of the witnesses and from the conduct of the appellants Sweta Devi, the narrative of commission of suicide of the deceased was found to be suspicious. This suspicion was founded on the information gathered during the course of investigation that the general conduct of the appellant of the Criminal Appeal (DB) No. 556 of 2015 was suspicious. Emergence of the facts, *inter alia*, during the course of enquiry that usually when the deceased would leave his house for work, persons of shady character would visit his place, which was objected even by the neighbours. On the fateful night too, the appellants Ravindra Prasad, Pappu Singh and one Chunnu Lal had arrived which was opposed by the deceased. The relationship between the deceased and his wife was not cordial because of unwarranted visits of the said two appellants and one Chunnu Lal to his house in his absence. The postmortem report suggested that the deceased died of Asphyxia caused by throttling. Based on the postmortem report dated 09.06.2009, the Investigating Officer formed an opinion that it was a case of homicide and not suicide. The Sub-Inspector of Police, Ramayan Ram (PW-16), based on the materials collected during



the enquiry of UD case, submitted a written report to the Station House Officer, town police station, Gopalganj on 14.08.2009, for registration of F.I.R.. Evidently, nearly two and half months had elapsed from the date of death of the deceased, when the said written report dated 14.08.2009 was submitted, which led to registration of the concerned Gopalganj P.S. Case No. 161 of 2009.

5. It is emphasized, at this juncture, that it was mentioned in the written report of the informant, Ramayan Ram (PW-16) that much after the submission of the postmortem report, an opinion was sought from the Chief Medical Officer, Sadar Hospital, Gopalganj, after constituting a medical board in order to give a definite opinion as to whether the death was a result of homicide or suicide. In response to the said request from PW-16, the Superintendent, Sadar Hospital Gopalganj, communicated the opinion of the Medical Board on 09.06.2009. It is the case of the prosecution that the said report dated 09.06.2009, clearly indicated that it was a case of homicide and, accordingly, the F.I.R was registered on 14.08.2009, for the offence punishable under Section 302 read with 120B of the Indian Penal Code (I.P.C. for brevity). The police, upon completion of the investigation, submitted its charge-sheet against appellants



Pappu Singh, Ravindra Prasad, and Sweta Devi based on which cognizance was taken of the offences punishable under Section 302/34 of the I.P.C. read with Section 120B thereof. A supplementary charge-sheet was also submitted on 02.05.2014 and 31.05.2014. The matter was thereafter committed to the court of Sessions, whereafter, the charges were framed against these appellants and co-accused Chunnu Lal. As the appellants denied the charge and claimed to be tried, they were put to trial. There were altogether four persons put to trial including these appellants and co-accused Chunnu Lal. It has been stated at the Bar that Chunnu Lal, has however, been acquitted of the charge by a Trial Court giving him benefit of doubt, in a separate trial.

6. At the trial, altogether 17 prosecutions' witnesses came to be examined. Further, the prosecution got proved the documentary evidences which came to be marked as Exhibits 1 to 7/2. After closure of the prosecution's evidence, the Trial Court asked these appellants to explain the circumstances which emerged against them, based on the evidence of the prosecution's witnesses. The appellants denied the circumstances, in their response. Two defence witnesses were examined for the appellant Ravindra Prasad, at the trial. The Trial Court after having analyzed, scrutinized and appreciated



the evidence at the trial, has recorded the finding of conviction and has passed the order of sentence as has been noted at the outset against these appellants which is under challenge in these appeals. The Trial Court has concluded in its judgment that the prosecution was able to prove its case beyond all reasonable doubts that these appellants had committed the murder of the deceased.

7. Be it noted, at this juncture itself, that the daughter of the victim, who was a child as on the date of occurrence, is the sole eye witness (PW-3) of the occurrence produced at the trial, on whose evidence, the conviction has been recorded. Out of 17 witnesses examined, PWs- 11, 12, 13, 14 and 17 are Investigating Officers who had investigated the case at different stages. The Sub-Inspector of Police, Ramayan Ram, the informant, was examined as PW-16; PWs-6 and 7 are the formal witnesses; PW-4, (Bijendra Kishore Prasad, father of the deceased); PW-5 (Shantanu Shrivastava, brother of the deceased) and PW-10 (Sanjay Kumar Sinha) are hearsay witnesses. The Doctor who had conducted the postmortem was examined as PW-2.

8. In the background of the peculiar facts and circumstances in which the F.I.R. was registered, as noted



above, and, subsequently, the charge-sheet was submitted, one of the moot questions, which has arisen in the present batch of criminal appeals is as to whether the judgment of finding of conviction can be sustained which is manifestly based on the sole testimony of an eight-year old child witness (PW-3).

9. Before dealing with the said aspect, we need to recount the pieces of the evidence of the witnesses adduced at the trial. In the facts and circumstances of the case, in our opinion, it would be apt to take note of the evidence of the informant Ramayan Ram (PW-16) first, based on whose suspicion, arising out of the report of the medical board dated 09.06.2009, the F.I.R. was registered, nearly two and half months after the date of occurrence. In his evidence, at the trial, he deposed that at 11:00 PM on 27.05.2009, he had received a telephonic call to the effect that someone had committed suicide in ward No. 3 of the municipal area. In order to verify the said information, he proceeded towards the place of occurrence. On his way to the place of occurrence, he had met the father of the deceased Bijendra Kishore Prasad (PW-4), whereafter he recorded the *fardbeyan* of PW-4 at the place of occurrence. He admitted that in the F.I.R. of UD case No. 4 of 2009, he had recorded that there was no suspicion against anyone. When his



attention was drawn to the contradiction between the statement of PW-3 (the child witness) recorded during the course of investigation, he admitted that she had given a materially different statement during the course of investigation of the UD case from her deposition at the trial. He further deposed that the father of the deceased and the family members had told him that the deceased had committed suicide. He reiterated in his cross-examination that father of the deceased (PW-4) had disclosed in his statement recorded by him (PW-16) that the daughter of the deceased (PW-3) and the neighbors had told him that the deceased had committed suicide after locking himself inside the house and that they were having no suspicion against anyone. He further deposed that PW-10, Sanjay and PW-5, Shantanu had stated during the course of enquiry in the UD case that the deceased had come to his house at about 8:00 pm and had rebuked the appellant Sweta Devi and kicked her out of the house, whereafter, the deceased had locked the door and committed suicide by hanging. He (PW-16) also deposed that in the UD case, PW-3 had given her statement to the effect that the deceased had come from outside and thereafter he had scolded and beaten up the appellant Shweta Devi and had kicked her out and locked himself inside the house. She had further stated



during the inquiry of the UD case that thereafter the deceased had committed suicide.

10. It would be apt to refer now to the evidence of the father of the deceased (PW-4). In his examination-in-chief, he deposed that in the night of 27.05.2009 at 11:00 PM, the daughter of the deceased (PW-3), his son, Rishu Kumar and a younger daughter had to him with Raj Kishore Prasad (PW-8), Abbas Kuraishi, (PW-6). They woke him (PW-4) up and informed him that his son Sudhir Kumar was dead. He (PW-4), alongwith his son Sanjay (PW-1) and Shantanu (PW-5) thereafter went to the police station to inform about the occurrence and proceeded towards the place of occurrence. Thereafter, they reached the place of occurrence with the police to find that the gate at the house was locked. He further deposed that after postmortem examination, at the time of photography, the children of the deceased informed him that these appellants and Chunnu Lal had killed the deceased by throttling his neck with rope. She had disclosed that whereas the appellant Sweta Devi sat over the body of the deceased, Pappu was holding the legs of the deceased; appellant Ravindra and Pappu were brandishing a dagger and to scare the children that they would be killed.

11. He (PW-4) also deposed that the main door of the house



of the deceased was locked when he had reached there but was unable to state whether the house was locked from the outside or from inside. He further deposed that the police had not broken open lock rather key of the lock was made available to him by the police. Further, the police had reached at the place of occurrence with him (PW-4). He further testified that the next day he had learnt true facts about the occurrence from the children, soon after the postmortem was conducted. He denied the suggestion that the deceased was demanding partition in the joint family property when the family had assembled on the occasion of *Shradha* Ceremony, consequent upon the death of the father of PW-4. It is evident from the evidence of PW-4 that the deceased was living separately with his wife (the appellant Sweta Devi) and his children from his father (PW-4) and other members of his family. He accepted the suggestion that he knew the appellant Ravindra from before, who worked as a stamp vendor in the Registry where PW-4 and the deceased also worked as *Katib*. He expressed is ignorance about any registered sale-deed executed between the deceased and the appellant Ravindra. He denied the suggestion that on 19.05.2009 appellant Ravindra had gone to Tata and deposed that he was at Gopalganj on that date. He also denied the suggestion that



appellant Ravindra was admitted in a hospital because of his ailment from 22.05.2019 to 01.06.2019.

12. The most crucial evidence in the present case is the deposition of Rupa Kumari (P.W.-3). Her age, as on the day of her deposition i.e. on 09.02.2015 was said to be 14 years. Apparently, as on the date of occurrence i.e. 27.05.2009, she was nearly 8 years. In her examination-in-chief she deposed that on the date of occurrence i.e. 27.05.2009 when the deceased had gone to purchase vegetables in the morning, her mother (appellant Sweta Devi) was talking with someone on a mobile phone. She (PW-3) told the appellant Sweta Devi that she had to purchase a notebook whereafter she left the house. The appellant Sweta Devi had told PW-3 to lock the door and carry the keys with her. She did not listen to that and left the house. On her way back to the house after purchasing the notebook, she found that the deceased was also coming. PW-3 accompanied him to the house. When they reached the deceased they found appellant Sweta Devi talking with someone. He (the deceased) inquired from her as to with whom she was talking. The deceased thereafter got agitated and assaulted the appellant Sweta Devi. The deceased then went in his room and slept thereafter. In the meanwhile, appellant Sweta Devi handed over



a letter to PW-3 asking her to give it to the mother of one Choti. She did accordingly. Thereafter, the appellant Sweta Devi wrote another letter and asked PW-3 to hand that over to someone in the house of one Ajit. She found the house of Ajit locked and accordingly returned back. Thereafter, the father of PW-3 got up and left the house at about 3:00-4:00 pm. Appellant Sweta Devi wanted PW-3 to follow him (the deceased) to gather as to where the deceased was going. She saw wife of Ajit coming from the same direction towards which the deceased was going. The deceased wanted to know from the wife of Ajit as to whether the mobile phone belonged to her to which she denied. PW-3, thereafter, explained to the appellant Sweta Devi as to what had transpired between the wife of Ajit and the deceased. Appellant Sweta Devi thereafter asked P.W.-3 to bring a mobile phone from a neighbour (PW-6). She brought the mobile phone from Abbas (PW-6) and gave that to the appellant Sweta Devi. Afterwards, the appellant Sweta Devi called one Angad. Appellant Sweta Devi is said to have told Angad to get the deceased drunk as he was to be killed that day. This, she (the appellant Sweta Devi) had said in the presence of Ajit. At that point of time PW-3 was playing with others in the Varandah when a man wearing a red coloured vest and white shirt came.



Thereafter, the appellant Sweta Devi locked PW-3 and the children in a room and then she opened the door of the house. After that, though the said man left the house but the appellant Sweta Devi did not open the door in which the children had been locked. She was talking with someone on phone till it had become night. Between 8:00-9:00 pm, only when the deceased returned, the door of the room in which PW-3 was locked was opened. She told PW-3 and children that, in case the deceased enquired about arrival of any person in the house they must answer in negative and thereafter the appellant Sweta Devi took her mattress to sleep on the terrace of the house. As the door of the house was locked from inside PW-3 was searching for the key for opening the door to let the deceased in, which they were not able to get. The key was subsequently found lying in the fridge. As it took sometime for PW-3 to open the door, the deceased got angry, beat her up and accosted her as to why there was so much of delay in opening the door. PW-3 explained him the reason. Then the deceased enquired about the appellant Sweta Devi. PW-3 told him that Sweta Devi had gone to sleep on the terrace of the house. The deceased went up to the terrace where an altercation and fight ensued between the deceased and appellant Sweta Devi. On the adjoining terrace, Abbas (PW-6)



was sitting with his wife Sahjaha Khatun (PW-7). They (PWs-6 and 7) came to intercede after having noticed the two fighting with each other. In the meanwhile, the person wearing the red vest and white shirt came. Appellant Pappu also came on a bike and asked for opening the door. The deceased told them to come tomorrow. They, however, did not leave the place. After sometime, the deceased came downstairs and opened the gate. The said two persons entered into the house. The person wearing red vest enquired from PW-3 as to whether they had eaten something or not. As they said no to it, Pappu was asked by the other person to bring eggs. Appellant Pappu brought three eggs, two of them were boiled and there was one raw egg for preparing omelette for the deceased. PW-3 prepared omelette and gave it to the deceased who consumed it. Thereafter, both the persons left the house. The deceased asked children and including PW-3 to go and sleep. They went in their room to sleep. Thereafter, all the three appellants entered into room in which PW-3 and her siblings sleeping, apparently to see whether all of them were sleeping or not. Thereafter, all the three went inside the room where the deceased was sleeping. Subsequent thereto, they saw from below the staircase that appellant Sweta Devi was pressing the neck of the deceased with a rope while



sitting on his belly. Appellant Pappu was, at that time, holding the legs of the deceased and appellant Ravindra his hands, which made children scream. Because PW-3 and the children were screaming, appellant Ravindra took out a dagger from his pocket and pointing it towards the children, he forbade them from making any noise, else would also be killed. Because of her scream, her younger sister had also got up and come. Appellant Ravindra thereafter passed on the dagger to the appellant Pappu. She further explained that, after killing the deceased, the appellant Sweta Devi moved towards a table, stood up on it and at the same time appellant Ravindra lifted the dead body of the deceased in order to hang it with the ceiling fan. The dead body was hung and thereafter the appellant Sweta Devi got down of the table and removed the stands of the table, apparently to give it a colour of suicide. Thereafter, they fled away by using stairs through the terrace. PW-3 and the children went to Abbas (PW-6) and told him that all these appellants had killed the deceased. She went to the house of Ajit also and told him to accompany her. The neighbours had also assembled. In the meanwhile, the appellants came and told PW-3 to go to the house of her grandfather (PW-4) to tell him that the deceased had died of hanging and not that they had killed him. They (the



children) got very scared and accordingly, when her grandfather came with one Raj Kishore (PW-8), she told them that the deceased had committed suicide by hanging himself. She, further deposed that when the dead body of the deceased was brought to their house, her brother had disclosed the true story to their uncle Sanjay Srivastava (PW-1). He, thereafter, had enquired from PW-3 about the occurrence. She too had disclosed the true story to Sanjay (PW-1). She identified, in the dark, all these appellants but not the person who was wearing red vest.

13. P.W.-I, in his testimony at the trial deposed that Abbas (PW-6) and the children of the deceased had come at about 11:05 pm in the night to tell them about the death of the deceased. PW-3 had disclosed him that the deceased had committed suicide by hanging. PW-6, Abbas, who was accompanying them had also told him that the deceased was dead. Despite being told by Abbas (PW-6) to go to the house of the deceased first after PW-1 was clearly told that his brother was no more, they decided to go to the police station first instead of going to the house of the deceased.

14. He further deposed that after the dead body of the deceased was brought to the house where PW-1, PW-4 and other



family members resided altogether. They were told by the children of the deceased that the deceased was killed by these appellants. This fact was first disclosed by the son of the deceased Rishu. [PW-3 disclosed everything in her statement recorded under Section 164 of the Code of Criminal Procedure (Cr.P.C. for brevity).] After cremation of the dead body, when PW-1 returned home, wife of Abbas (PW-7) had come, running, with a female with her to tell that wife (appellant Sweta Devi) of Sudhir (the deceased) was taking away all the articles from the house where the deceased used to reside, through her (PW-7) terrace. He immediately, informed the SDPO in this regard, and on an assurance given by the SDPO that he would be sending police party to the place of occurrence and on being asked by him to proceed towards the place of occurrence, PW-1 had rushed towards the house where the deceased used to reside. He had seen wife of the deceased i.e. Sweta Devi (the appellant) going with her mother in a rickshaw. The I.O. of the UD case Ramayan Ram (PW-16) had thereafter taken the appellant Sweta Devi to the police station. Subsequently she was released by the police. He admitted in his deposition that since deceased died on 27.05.2009, his children including PW-3 were residing with them together on the date when he was making his deposition.



He denied that PW-3 was own daughter of the deceased. He rather said that she was three to four months' old when the appellant Sweta Devi had come to their house after marriage. It is evident from the evidence of PW-1 that he is hearsay witness.

15. PW-4, another brother of the deceased, too is a hearsay witness. He denied the suggestion that a case of suicide committed by the deceased was being given colour of a homicide for personal gains to deny Sweta Devi her rights in the property which she was entitled to receive, consequent upon the death of the deceased.

16. PW-6, Abbas Kuraishi, the immediate neighbour of the deceased, has been declared hostile at the instance of the prosecution as he did not support the prosecution's case.

17. PW-7, Sahjaha Khatun, the wife of PW-6, too did not support the prosecution's case of the deceased having been killed by these appellants. She denied that she had ever stated before the police that many persons used to visit the deceased or that the Sweta Devi used to meet such visitors. She declined to have told the police about arrival of the appellant Ravindra Prasad and Pappu Singh on the date of occurrence. She also deposed that the deceased had died by committing suicide. PW-8, Raj Kishore Prasad too did not support the prosecution's case



in his evidence at the trial. PW-9, Sohrab Ali is a formal witness.

18. Sanjay Kumar Sinha, PW-10 is the brother-in-law (husband of the sister) of the deceased. As has been deposed by PW-1, PW-4 and PW-5, he also learnt about the manner of occurrence from PW-3. He was told by his father-in-law, PW-4 that the deceased had committed suicide. He is thus a hearsay witness.

19. The deposition of PWs 14 & 15, who are the Investigating Officers are not of significance for the purpose of present adjudication in this appeal. PW-11, one of the Investigating Officers deposed that the statement of PW-3 was recorded under Section 164 of the Cr.P.C.. It is pertinent to point out that the said statement under Section 164 of the Cr.P.C. has not been proved at the trial.

20. The informant Ramayan Ram was examined as PW-16. He deposed that when he had informally learnt about the death of a person by committing suicide, he had proceeded for verification of the fact towards the place of occurrence, and on the way, he had met father of the deceased (PW-4). The house where the deceased used to reside was closed from inside. He, therefore, used stairs in the courtyard of a neighbour to enter



into the house of the deceased and reach the place of occurrence. He had noticed that the dead body of the deceased was lying below the fan. The room had two doors, one of which was open. He admitted during the cross-examination, the contradiction in the original statement of PW-4 and in his restatement recorded during the investigation.

21. The Doctor PW-2, had conducted the postmortem. He proved the following report recorded after examination.

“”Held the postmortem examination on the dead body of Sudhir Kumar aged about 35 years S/o Brajendra Kishor Prasad Muhala Sareya, Sadhu Chawk Ward No. 3 P.S + Distt, Gopalganj on 28.05.2009 at 12.20 PM and found the following antemortem injuries on the person deceased.

On external examination-

Face was congested and pupil was dilated. One ligature mark was found all around the upper neck. Another ligature mark situated at the upper neck starting from in between the chin and first mark and extending to back of upper neck at the angle of mandible. Abrasion and echymosis were found round about the edge of mark of ligature.

On dissection-

-Extravasation of blood into the **subcutaneous** tissues under the ligature mark. Abrasion and echymosis were found round about the edge of ligature mark.

-A Hyoid bone was fractured.



-Brain, Larynx and trachea were congested.

-Lungs, Liver, spleen and kidneys were found congested.

Opinion- In my opinion, the cause of death was due to asphyxia caused by strangulation.

Time elapsed since death -within 24 hours (twenty four hours)”

22. He further deposed as under:-

“These injuries are sufficient to cause of death in ordinary course of nature. Dr. A.K. Suman was observer. The signature of Dr. A.K. Suman recognised. This P.M. Report is in my pen and signature. Exhibited as 1.

The medical board which is constituted by the order of C.S.-Cum-C.M.O., Gopalganj under the chairmanship of D.S. Sadar Hospital, Gopalganj. Perused the P.M. Report dated 28.05.2009 in respect of Sudhir Kumar aged about 35 years, S/o Brajendra Kishore Prasad, Mohulla-Sareya, Sadhu Chowk, Ward No. 3, P.S. and District-Gopalganj and recorded findings as under date 09.06.2009 at 12.30 pm

1- Face was congested and pupils was dilated.

2-One ligature mark was found all around the upper neck. Another ligature mark situated at upper neck starting from in between the chin and first mark and



extending upto back of neck at the angle of mandible. Abrasion and echmosis were found a round about the age mark of ligature. 3-Extra vassation of blood into the subcutaneous tissue under the ligature mark. Abrasion and echymosis were found round about the age of ligature mark.

4- Hyoid bone was fractured.

5-Brain larynx and trachea were congested.

6- Lungs, liver, spline and kidney were found congested.

In view of above findings, the Board opined that the cause of death was due to asphyxia caused by strangulation which might be homicidal. Dr. Alok Kumar Suman and Dr. Sanjeev Kumar Both posted at Sadar Hospital, Gopalganj at the time were member of Board including me. Dr. A.K. Suman and Dr. Sanjeev Kumar signed before me on the Medical Board Report Exhibit-1/1. 1/2. Medical Board Report bears in my pen and signature. Which I identified exhibited as 1/3.”

23. In his cross-examination, he deposed that on the dead body, there was only one ligature mark and there was no other injury.

24. The investigating Officer, Sudama Rai (PW-17), in his deposition at the trial stated that he had taken over the charge on



14.08.2009 of the investigation of the case. According to him, he had inspected the place of occurrence i.e. the room of the house of the deceased in which the deceased and his family members resided and had noticed the wooden table lying with its legs broken. According to him, when he had reached the house with the informant (Ramayan Ram, PW-16), the main entrance of the house was open and he had not inquired as to why was the door open. During his cross examination, he deposed that PW-3 had not told him that she had awakened her brother to tell him that these appellants had come in the house. He also deposed that during the investigation, PW-3 had not stated during the course of investigation that she had seen the occurrence from below the staircase and had screamed. She had also not disclosed that Ravindra Prasad (the appellant) had passed on the dagger to Pappu (the appellant).

25. As has been noticed above, three defence witnesses were examined, in defence of the appellant Ravindra Prasad, raising a plea of *alibi*. The said plea of alibi has been rejected by the Trial Court by its impugned judgment and order. In the present facts and circumstances of the case, based on the evidence of the parties, we need not go into the strength, correctness or otherwise of the plea of alibi taken on behalf of the appellant,



Ravindra Prasad.

26. Mr. Jagannath Singh, learned counsel appearing on behalf of the appellant Pappu Singh, has submitted that the finding recorded by the Trial Court that the prosecution was able to establish a case of murder against this appellant beyond all reasonable doubt, is wholly unsustainable on various grounds. He contends that disclosure of the fact that the deceased was killed rather than he had committed suicide, for the first time two and half months after the date of occurrence is itself a suspicious circumstance, fatal for the prosecution's case. He has also submitted that the father and the brothers of the deceased in their evidence deposed that PW-3, the daughter of the deceased had told them that the deceased was killed by these appellants, rather than he had committed suicide, soon after the postmortem examination was held. The fact that these witnesses, who did not come forward to report the case to be a case of murder, is another significant circumstance to suggest that the appellants came to be falsely implicated for ulterior reasons. He has further submitted that the entire case of the prosecution hinges around the evidence of PW-3, a child witness, who was eight years of age as on the date of occurrence and who claimed to be 14 years of age as on the date of deposition on 09.02.2015. He has



contended that there are material contradictions and inconsistencies in the evidence of the prosecution's witnesses, including evidence of PW-3 read with the evidence of the Investigating Officer. He has submitted that the evidence of PW-3, a child witness is not credible and cannot be said to be free from any influence. He has further argued the prosecution has miserably failed to prove beyond reasonable doubt that it was a case of homicide and not of suicide. He has also submitted that the persons living in the vicinity of the place of occurrence, namely, Abbas Kuraishi (P.W.-6), Raj Kishore Prasad (P.W.-8) and Ajit along with P.W.-3 had informed the father of the deceased (P.W.-4) that the deceased had committed suicide, soon after the occurrence. P.Ws-6, 7 and 8 have not supported the prosecution's case, rather their evidence indicates that the deceased had committed suicide. They are independent witnesses and their depositions could not have been discounted by the Trial Court. Further, according to the witnesses, both P.W.-3 and her younger brother, Rishu, who had witnessed the occurrence, according to the prosecution's case, had claimed to have informed P.Ws 1, 4 and 5, about the killing of the deceased by these appellants and a co-accused Chunnu Lal on 28.05.2009, soon after the postmortem examination was



conducted, but there is no explanation as to why this fact was not brought to the notice of the police soon thereafter. Further, the medical evidence does not conclusively establish that it was a case of homicide. He has submitted that in any event, the evidence of a child witness, though may not be rejected outrightly, they need to be evaluated carefully with greater circumspection. He accordingly submits that the impugned judgment of conviction passed by the trial court deserves interference and that the appellant Pappu Singh deserves to be acquitted of the charge.

27. Mr. Sanjay Singh, learned Senior Counsel appearing on behalf of the appellant Ravindra Prasad, while broadly adopting the submission made by Mr. Jagnath Singh, learned counsel, has submitted that none of the independent witnesses, namely P.W.-6, P.W.-7 and P.W.-8, have supported the prosecution's case of homicide and only such witnesses who are highly interested have supported the prosecution's case primarily with reference to the disclosure made to them by P.W.-3. He has submitted, with reference to the evidence of the informant, P.W.-16, who was inquiring into the UD case that he had not noticed any sign of struggle in the room, where the occurrence had taken place and the things kept in the room were not untidy. He has argued



that there is no explanation put forth by the prosecution as to why the members of the family of the deceased, much after registration of the UD case, developed a case of murder based on the disclosure said to have been made to them by PW-3 soon after the postmortem examination was conducted. He has urged that the appellant Ravindra Kumar has been falsely implicated by PW-4 and PW-1 because they did not want to honor the sale of the land executed by the deceased in favour of the appellant on 06.09.2006. He has further submitted that the prosecution miserably failed to establish its case that the appellant Sweta Devi had any illicit relationship with this appellant.

28. Mr. Amish Kumar, learned *Amicus Curiae* has extended valuable assistance to this Court in order to defend the appellant Sweta Devi who had remained unrepresented at the trial. He, too, while generally adopting the submissions advanced on behalf of the appellant, Pappu Singh and Ravindra Prasad, has questioned the conduct of the prosecution's witnesses who did not inform the police about the alleged murder of the deceased despite having learnt from PW-3 and her younger brother that the deceased was killed, on the very next day of the occurrence. He has drawn the Court's attention to the evidence of Doctor, PW-2 to contend that on the dead body,



only one ligature mark was found and there was no other injury. Referring to his deposition, he has submitted that, he, in his evidence, did not rule out it to be a case of suicide and explaining the expression used in the report of the medical board that it "might be homicidal" would include that the same "might not be homicidal". He has submitted that in the inquest report, the informant had opined that the death appeared to have been caused by hanging. He has accordingly submitted that the statements of the prosecution's witnesses are full of contradictions; what has been deposed before the Court and what had been narrated before the police in the UD case are materially different. He has argued that the finding in the postmortem report followed by the opinion of a medical board on the said report does not definitely indicate that it was a case of homicide. He has accordingly submitted that the impugned judgement and order of the trial court convicting appellant Sweta Devi is unsustainable inasmuch as the prosecution has failed to prove that the death of the deceased was homicidal and the depositions of the prosecution's witnesses, who have supported the case of prosecution are apparently full of suspicions, contradictions and inconsistencies.

29. Ms. Shashi Bala Verma, learned Additional Public



Prosecutor appearing on behalf of the State has emphatically argued that evidence of P.W.-3, who is a child witness, does not suffer from any material contradiction or inconsistency. She, in her deposition, has vividly narrated the entire incident including the fact that the deceased was killed by these three appellants which she had witnessed being in the same house. She has submitted that the delay of few hours in disclosure of the true facts to the father and brother of the deceased by P.W.-3 is for the apparent reason that of her natural trepidation, fight and fearfulness because the appellant had pointed dagger towards her and threatened of killing her. She accordingly contends that the narration of the facts by her to her grandfather and uncles after the postmortem was conducted cannot be treated to be a belated information so as to doubt the entire case of the prosecution. P.W.-3, in her deposition has criticized the conduct of her own mother (Sweta Devi, the appellant) which may not be ignored by this Court while considering the evidence of P.W.-3, she argues. She has submitted that the dead body of the deceased was found lying on the floor when the informant, P.W.-16 had reached at the place of occurrence. It was, apparently thus, not a case of the suicide rather the appellants attempted to give it a colour of suicide after having killed the



deceased.

30. We have perused the impugned judgment and order of the Trial Court as well as the lower court records including the evidence of the prosecution's witnesses and documentary evidence adduced at the trial. We have given our thoughtful consideration to the rival submissions made on behalf of the parties.

31. It can be easily discerned from the evidence of the witnesses, which have been taken note of hereinabove, that the deceased had died on 27.05.2009 in the night at about 10:30p.m.. P.W-3 and her brother Rishu are said to have informed the immediate neighbour Abbas (P.W.-6) and his wife Shahjahan Khatoon (P.W.-7) that the deceased had committed suicide. Both the witnesses have deposed in their evidence that they were told by P.W.-3 that the deceased had committed suicide. P.W.-6 has not supported the prosecution's case and has been declared hostile at the instance of the prosecution.

32. P.W.-7 has, however, not been declared hostile, though she has not supported the prosecution's case. P.W.-7 in her deposition clearly stated that she had told the police that she had seen the deceased, who had hanged himself from the ceiling fan and his dead body was lying. Further, it is the consistent case of



the prosecution that the father of the deceased (P.W.-4) and his sons and the son-in-law were informed by P.W.-3, her younger brother and Abbas (P.W.-6) that the deceased had committed suicide, soon after the occurrence. Instead of going to the house of the deceased after getting the information of his death, his father (P.W.-4) and his sons proceeded to the police station to inform the police. It is the evidence of the informant (P.W.-16) that when he had learnt telephonically about suicide committed by a person in ward No. 3, after recording a *sanha*, he had proceeded towards the place of occurrence, in the meanwhile he had met the father of the deceased (P.W.-4) and his other relatives. He had gone to the place of occurrence with them, when he had found that the door was locked from inside. This had made the informant (PW-16) to use stairs of a neighbour to reach his roof and then using the stairs of the house where the occurrence had taken place, he entered into the house and reached the place of occurrence i.e. the room where the dead body of the deceased was lying. He had recorded the statements of Sanjay Prasad (P.W.-1), Sanjay Kumar Sinha (P.W.-10), Rupa Kumari (P.W.-3), Abbas Qureshi (P.W.-6) and Sahjaha Khatun (P.W.-7). Apparently, there was no indication that the deceased was killed rather in his closure report, he mentioned that the



deceased appeared to have committed suicide. He noticed that a black colour plastic rope was hanging from a ceiling fan in the said room under which the dead body of the deceased was lying. The plastic rope/cord was found tied and broken.

33. At this juncture, it would be apposite to notice the evidence of Bijendra Kishore Prasad (P.W.-4). Strangely enough, while supporting the prosecution's case that he had accompanied the police officer (the informant, P.W.-16) from the police station to the place of occurrence, in his cross-examination, he deposed that when he reached the house of the deceased, the main door was locked. He further, deposed that the lock was not broken rather a key was made available by the police. He admitted that he learnt about the killing of the deceased from the children soon after the postmortem examination was conducted. There is no evidence as to how the police officer came in possession of the key. There appears to be no justification for PW-4 for not having informed the police about the occurrence, as was disclosed by PW-3.

34. There is another significant angle in this case. P.W.-1, deposed in his examination-in-chief that when the dead body was brought to the house after the postmortem examination, the children of the deceased had already disclosed that the deceased



was killed by the appellants. Nearly, at the same time, Ramayan Ram (P.W.-16) had come to his house and had told him that the Superintendent of police wanted to have a photograph of the dead body of the deceased. At that time itself, according to PW-1, he had disclosed the entire fact to the informant Ramayan Ram (PW-16). As has been noted above, the family members had returned in the evening after cremation. According to P.W.-1, P.W.-7 had come with another woman to inform that appellant Sweta Devi was collecting articles from the house for fleeing away. Thereafter, he informed the police and proceeded towards the house of the deceased when he noticed that appellant Sweta Devi and her mother were going in a rickshaw. If the evidence of P.W.-1 is to be believed, it suggests that the appellant Sweta Devi had not disappeared from the scene after the occurrence. Further, in the meanwhile, the police had also reached and taken Sweta Devi to police station. From the evidence of the informant, on the other hand, it is clear that he had absolutely no knowledge about the story said to have been disclosed by the children to the prosecution's witnesses about murder of the deceased by these appellants. All these aspects taken together, create a reasonably suspicious circumstance as to why the father, brothers and other relatives of the deceased, despite



having learnt about killing of the deceased by these appellants from the children including PW-3, would not convey the true facts to the police and why was the F.I.R. was not got registered immediately thereafter for the offence. On the other hand, from the F.I.R., it appears that in the light of contrary statements made by the witnesses to the police during the course of investigation it seemed to the informant that it was a case of murder. The F.I.R. does not disclose any concrete basis for the informant for forming an opinion that it could be a case of murder; except the said report of the Medical Board to the effect that it might be a case of homicide. It is pertinent to mention that the postmortem report is dated 28.05.2005 (Exhibit-1). After preparation of the postmortem report, the police appear to have sent a requisition to the Chief Medical Officer, Sadar Hospital, Gopalganj for a report of a Board of medical experts with an opinion as to whether the death of the deceased was homicidal or suicidal. On 09.06.2009, a medical board had recorded its finding, as has been noted above, wherein the Board opined that the cause of death was due to Asphyxia caused by strangulation which 'might be homicidal'. There was, thus, no conclusive opinion of the Medical Board that the death was homicidal. It is worthwhile noticing that the postmortem report



has mentioned presence of one ligature mark all around the upper neck. Another ligature mark situated at upper neck starting from in between the chin and extending up to back of the neck at the angle of mandible. In his evidence, P.W.-2 has, in no uncertain terms deposed in paragraph-18 that on the dead body, there was one ligature mark and there was no other injury.

35. We now need to address the evidence of most crucial, sole eye witness, P.W.-3. Apparently, she was deposing at the trial on 09.02.2015, nearly six years after the date of occurrence. She had stayed with the prosecution's witnesses, viz. P.W.-4 and his family members, from immediately after the death of the deceased. Her deposition at the trial needs to be considered simultaneously with the evidence of the Investigating Officer, Sudama Rai (P.W.-17). P.W.-3 in her deposition stated that in the night, these appellants had peeped into her room in which she was sleeping with her siblings. As they (the appellants) moved towards the room of the deceased, she (PW-3) awoke her brother and thereafter both of them saw occurrence taking place from below the staircase. The Investigating Officer, in his cross-examination denied that these facts were told to him by P.W.-3 during the course of investigation. She had rather stated in her statement under Section 161 of the Cr.P.C. before the police that



she had screamed. It is also significant to notice that in her deposition at the trial, P.W.-3 has testified that because of her screaming, appellant Ravindra had brandished a dagger and had threatened to kill her. She further deposed that Ravindra (the appellant) had handed over the dagger to Pappu. The I.O., on the other hand, in his deposition said that P.W.-3 in her statement before the police had not stated that Ravindra (appellant) had given the dagger to Pappu, the appellant. Evidently, thus, for the first time, P.W.-3, a child witness exposted a substantially different description of the occurrence as was initially recorded by the police during the course of investigation.

36. We are, thus, of the opinion that the prosecution's case, right from institution of the UD case till adducement of the evidence at the trial has been substantially different, primarily based on the disclosures made by P.W.-3 to the family members of the deceased, to the police and in her evidence at the trial. Initially, P.W.-3 narrated it to be a case of suicide committed by the deceased to the father and brothers of the deceased as well as the neighbours (P.W.-6 and P.W.-7). The family members of the deceased examined as prosecution's witnesses as noted hereinabove testify that they had learnt about the fact that the deceased was killed firstly from the younger brother of P.W.-3



which was subsequently explained to them in detail by P.W.-3. The younger brother of P.W.-3, who according to the P.W.-3 was also an eye witness was not examined in any manner whatsoever. Further, brother of the deceased claims to have disclosed everything what was told to him by P.W.-3 and her brother to the informant (P.W.-16) soon thereafter. In the aforesaid background, the registration of the F.I.R. for the offence punishable under Section 302 of the I.P.C. 2 and 1/2 months after the informant (a police officer) was informed, in our opinion, generates strong suspicion regarding implication of these appellants in the case. In the background of these aspects, we need to appreciate the testimony of P.W.-3, a child witness.

37. It is well established principle that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed away by what others tell him/her and thus a child witness is an easy prey for tutoring. [See: (1998) 7 SCC 177 (*Panchhi and Ors. Vs. State of U.P.*) Para-11]

38. However, it is not the law that if the witness is child, his evidence must be rejected, even if it is found reliable. It is true that if child is found competent to depose and his evidence is found reliable a conviction can be based on such evidence. The



evidence of a child cannot be discarded *per se*. Section 118 of the Evidence Act lays down that all persons shall be competent to testify unless the Court considers that they were prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease whether of body or mind. The Courts at the same time have laid down that the evidence of a child witness must find adequate corroboration before it is relied on. Reiterating this principle with reference to the Supreme Court's decision in case of *Prakash and Another Vs. State of Madhya Pradesh* reported in (1992) 4 SCC 225, *Baby Knadayanathil Vs. State of Kerala* reported in 1993 Supp (3) SCC 667, *Raja Ram Yadav Vs. State of Bihar* reported in (1996) 9 SCC 287 and *Dattu Ramrao Sakhare and Ors. Vs. State of Maharashtra* reported in (1997) 5 SCC 341, the Supreme Court has remarked in case of *Panchi* (supra) that it is more a rule of practical wisdom than of the law.

39. In the present case, considering material inconsistencies and the improvements made at the stage of trial by the prosecution witnesses cast a cloud on the creditworthiness of the evidence of P.W.-3 who claimed to be an eye witness to the occurrence, for more than one reasons. Firstly, for the first time,



she deposed at the trial, nearly six years after the date of occurrence, that he and his brother had seen the occurrence taking place from below the stairs. This was not stated by her to the police during the course of investigation. For the first time, she came out with this narration at the trial. It was the case of the prosecution on the other hand that she had seen the occurrence while sitting in the room where she and her siblings were sleeping. She had admittedly disclosed in her initial version to the persons, who came to be examined at the trial, that the deceased had committed suicide. She changed her version subsequently and for the first time her statement was recorded under Section 164 of the Cr.P.C. in October, 2009. The said statement of P.W.-3 recorded under Section 164 of the Cr.P.C. has not been proved at the trial. However, the contradictions and inconsistencies in the evidence of the prosecution's witnesses including P.W.-3 are material and cannot be treated to be minor for them to be ignored in the absence of any reliable corroborative evidence to support the prosecution's case that the deceased was murdered by these appellants. In our opinion, thus, the facts and circumstances give rise to a reasonable doubt on the prosecution's case that the deceased was killed by these appellants in the manner as set out



by the prosecution during the course of investigation and at the trial. The benefit of doubt, in the Court's opinion deserves to be extended to the appellants in the facts and circumstances of the case. Upon careful examination of the evidence on record, we are of the view that the prosecution failed to prove its case of commission of offence punishable under Section read with 302 read with 120B of the I.P.C. beyond all reasonable doubts.

40. In view of the aforesaid discussions, in our opinion, it is unsafe for this Court to uphold the finding of conviction recorded by the Trial Court in its impugned judgment and order.

41. Accordingly, the impugned judgment of conviction dated 16.05.2015 and order of sentence dated 20.05.2015 passed in Sessions Case No. 382 of 2014/Registration No. 823 of 2014 passed by learned District and Sessions Judge, Gopalganj, are hereby set aside.

42. The appellants are acquitted of the charge of commission of offence punishable under Section 302 read with 34 of the I.P.C. by giving them benefit of doubt.

43. These appeals are accordingly allowed.

44. The appellants are in custody. Let them be released forthwith, if they are not required in any other case.

45. Before we part with the present judgement and order,



we record our deep appreciation for the able assistance extended to this Court by Mr. Amish Kumar, learned advocate appointed as an amicus curiae, in the absence of any representation on behalf of the appellant Sweta Devi. For the assistance so extended we direct the Secretary, Patna High Court Legal Service Committee, to pay to him a token amount of rupees fifteen thousand in recognition of his selfless service extended to this Court.

46. Let a copy of this order be communicated to the learned Secretary, Patna High Court Legal Service Committee.

(Chakradhari Sharan Singh, J)

I agree
Khatim Reza, J:

(Khatim Reza, J)

Nishant-

AFR/NAFR	NAFR
CAV DATE	11.08.2022
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