

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.413 of 2015

Arising Out of PS. Case No.-3 Year-2012 Thana- TIKAPATTI District- Purnia

Naresh Mandal Son of Late Dasrath Mandal Resident of village Tintanga, P.S.
Tika Patti, District- Purnea.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sunil Kumar Singh, Advocate
For the Respondent/s : Mr. Dr. Maya Nand Jha, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 24-06-2022

By this appeal, appellant/convicted accused Naresh Mandal is challenging the judgment and order dated 02.02.2015 passed by the learned Additional Sessions Judge-III, Purnea, in Sessions Case No.487 of 2012 thereby convicted him of the offences punishable under Sections 302 and 201 of the Indian Penal Code. The appellant/convicted accused is sentenced to suffer rigorous imprisonment for life apart from a direction to pay fine of Rs.50,000/- (Fifty thousand) for the offence punishable under Section 302 of the Indian Penal Code. He is sentenced to suffer rigorous imprisonment for four years apart from a direction to pay fine of Rs.10,000/- (Ten thousand) for



the offence punishable under Section 201 of the Indian Penal Code. In addition, the learned trial Court had directed him to suffer default sentence of simple imprisonment of six months in case of default in payment of fine, as directed. For the sake of convenience, the appellant shall be referred to in his original capacity as an accused.

2. Facts in brief leading to the prosecution of the accused, projected from the police report, can be summarized thus:

(A). Accused Naresh Mandal, PW 5 Kavita Devi (the first informant) and her husband PW 6 Hiralal Thakur are resident of village Tintanga, P.S. Tika Patti, District- Purnea. Similarly, PW 8 Ghanshayam Thakur, who is relative of PW 6 Hiralal Thakur, is also resident of the same village. Guriya Devi, aged about 12 years (since deceased) was daughter of PW 5 Kavita Devi and PW 6 Hiralal Thakur.

(B) It is case of the prosecution that there was incident of outraging the modesty of the daughter of co-villager, namely, Amrit Mandal, three years prior to the date of the incident. That incident was taken up by the Panchayat of the village. Guriya Kumari (since deceased) appeared as a witness of the incident before the Panchayat and the Panchayat had directed



accused Naresh Mandal to pay fine of rupees five thousand. That is how instead of taking the matter to the Court of law, the same was settled at the level of the Panchayat by the villagers. Act of Guriya Kumari (since deceased) to appear as witness against the accused before that Panchayat infuriated the accused and gave him motive to eliminate Guriya Kumari.

(C). The incident in question took place on 27.01.2012. At about 2:00 PM of that day, Guriya Kumari and her mother PW 5 Kavita Devi went to *Dhanni Bahiyar* of village Tintanga for cutting and collecting the grass. When they were about to return back to the village, accused Naresh Mandal came there and dragged Guriya Kumari towards maize field of Nathu Saw. PW 5 Kavita Devi- mother of Guriya Kumari, followed accused Naresh Mandal. She saw that the accused thrust her daughter Guriya Kumari on the ground, sat on her chest and slit her throat. Upon seeing brutal murder of her daughter Guriya Kumari, PW 5 Kavita Devi rushed towards her house in shocked condition and became unconscious. Shortly thereafter, her husband PW 6 Hiralal returned to the house and noticed his wife Kavita Devi lying unconscious. He sprinkled water on her and that is how PW 5 Kavita Devi regained conscious. She disclosed the incident of horridious murder of



her daughter Guriya Kumari to PW 6 Hiralal Thakur. Accompanied by his son Bipin Thakur and brother Ghanshyam Thakur as well as other neighbours and villagers, Hiralal Thakur went to *Dhanni Bahiyar* and found the dead body of his daughter Guriya Kumari lying in the middle of maize field of Nathu Saw with bleeding injury on her neck.

(D). Upon getting information of the incident, police reached the spot of the incident. PW 6 Hiralal Thakur lodged the FIR at 9:20 PM of 27.01.2012 itself, on the spot of the incident. Accordingly, Crime No.3 of 2012 for the offences punishable under Sections 302 and 201 of the Indian Penal Code came to be registered with Tika Patti Police Station against the accused and routine investigation followed.

(E). During the course of investigation, the dead body of Guriya Kumari came to be inspected and inquest notes were prepared. It was dispatched for post mortem examination to the Sadar Hospital, Purnea, where PW 9 Dr. Vijay Kumar conducted autopsy and prepared report of post mortem examination. Statement of witnesses came to be recorded. The accused came to be arrested and on completion of investigation, the charge sheet came to be filed.

(F). The trial Court framed the charge for the offences



punishable under Sections 302 and 201 of the Indian Penal Code against the accused. He pleaded not guilty and claimed trial.

(G). In order to bring home the guilt to the accused, the prosecution has examined as many as ten witnesses. PW 1 Amit Kumar, PW 2 Srikant Mandal, PW 3 Binod Kumar Mandal and PW 4 Paramjit Mandal are co-villagers, who have turned hostile to the prosecution. PW 5 Kavita Devi- mother of Guriya Kumari is an eyewitness to the incident. First informant Hiralal Thakur is examined as PW 6. Investigating Officer Abhay Kumar is examined as PW 7. Ghanshyam Thakur relative of the prosecuting party is examined as PW 8. Autopsy surgeon Dr. Vijay Kumar of Sadar Hospital, Purnea, is examined as PW 9. Investigating Officer Jagdish Pandey is examined as PW 10. The prosecution has also relied on documentary evidence, such as the inquest report Ext-6, the report of post mortem examination Ext-4 and the FIR Ext-5.

(H). The defence of the accused was that of total denial. However, he did not enter in the defence. Upon hearing the parties, the learned trial Court by the impugned judgment and order was pleased to convict the appellant/accused and to sentence him as indicated in the opening para of the judgment.

3. We heard the learned Counsel appearing for the



appellant-accused at sufficient length of time. By taking us through the record and proceedings and more particularly through the depositions of prosecution witnesses, it is argued that the weapon of the offence was not recovered during the course of investigation. The learned counsel for the appellant further argued that PWs 1 to 4 were the independent witnesses but they have failed to support the case of the prosecution. According to the learned counsel for the appellant, case of the prosecution is supported by interested witnesses, such as parents of deceased Guriya Kumari and her relative. Evidence of such interested witnesses cannot be acted upon for recording the conviction for serious offences. Therefore, according to the learned counsel for the appellant, benefit of doubt is required to be given by allowing the appeal. As against this the learned Additional Public Prosecutor supported the impugned judgment and order.

4. We have considered the submissions so advanced and we have also perused the record and proceedings. As the charge is for the offence punishable under Section 302 of the Indian Penal Code, at the outset, the prosecution will have to prove the fact that Guriya Kumari died homicidal death and for establishing this fact, the prosecution has tendered the evidence



of autopsy surgeon Dr. Vijay Kumar. Evidence of Investigating Officer PW 10 Jagdish Pandey shows that he inspected dead body of Guriya Kumari, prepared inquest notes and dispatched the dead body to the Sadar Hospital, Purnea, for the purpose of conducting post mortem examination. It is in evidence of PW 9 Dr. Vijay Kumar, Medical Officer of Sadar Hospital, Purnea, that on 28.01.2012 he conducted post mortem examination on dead body of Guriya Kumari, aged about 12 years, at the Sadar Hospital, Purnea. As deposed by him, during post mortem examination of the dead body he noticed the following injury on the dead body of Guriya Kumari:-

I. Incised wound on front of neck, below thyroid cartilage of size 3.5" x 1/2" x 1/2" cutting large vessels of neck on both sides as well as wind pipe.

The autopsy surgeon further deposed that after conducting post mortem examination, he opined that death of Guriya Kumari was due to shock and haemorrhage as a result of the injury, which was sufficient to cause death of a human being in ordinary course of nature. This evidence of the autopsy surgeon is corroborated by contemporaneous report of post mortem examination prepared by him. There is nothing in cross-examination of PW 9 Dr. Vijay Kumar to doubt his



version. Thus, evidence of PW 9 Dr. Vijay Kumar is sufficient to conclude that Guriya Kumari died homicidal death because of slitting of her neck by a sharp edged weapon.

5. Now let us examine whether the prosecution has proved that the accused had committed murder of Guriya Kumari and thereafter caused disappearance of evidence of murder for screening himself from legal punishment.

6. As pointed out in the foregoing paragraph, the impugned judgment and order is assailed on the ground that only evidence available for connecting the accused to the crime in question is coming from the mouth of near and dear ones of deceased Guriya Kumari and, therefore, the same cannot be relied upon for recording the conviction. Therefore, at this juncture, it would be apposite to place on record the legal position in that regard crystallized the catena of judgment of the Hon'ble Supreme Court.

In the matter of **Hari Obula Reddy V. State of A.P.** reported in **(1981) 3 SCC 675** the Hon'ble Supreme Court has held thus:

“ an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by



independent evidence. All that is necessary is that the evidence of the interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereof”

In **Kartik Malhar V. State of Bihar** reported in (1996) SCC 614 the Hon’ble Supreme Court has held that a close relative who is natural witness cannot be regarded as an interested witness, for the term “interested” postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason.

In **Ram Chander V. State of Haryana** reported in (2017) 2 SCC 321 the Hon’ble Supreme Court has held thus in paragraph 33 of its judgment:-

“ 33. The submission of the learned counsel for the appellants that since Guddi (PW 9) was in close relation with the deceased persons, she should not be believed for want of



evidence of any independent witness, deserves to be rejected in the light of the law laid down by this Court in Dalbir Kaur V. State of Punjab reported in (1976) 4 SCC 158 and Harbans Kaur V. State of Haryana reported in (2005) 9 SCC 195, which lays down the following proposition (Harbans Kaur case) SCC Page 198, para 7)

‘7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused.’ ”

In Dilip Singh V. State of Punjab reported in **AIR 1952 Supreme Court 364** it is observed by the Hon’ble Supreme Court that a witness is normally to be considered independent unless he or she springs from the source which are likely to be tended and that usually means unless the witness has cause such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent



person.

It is thus clear that only because a witness is close relative of the victim, he or she cannot be characterized as an interested witness. Evidence of such witness requires careful scrutiny and if version of such witness is found to be reliable and trustworthy, conviction can be based even on sole testimony of such a close relative.

7. By keeping in mind this position of law, let us examine whether evidence of PW 5 Kavita Devi, who happens to be mother of the deceased is wholly trustworthy and intrinsically reliable for basing the conviction. She is an absolutely natural witness to the incident in question inasmuch as, she accompanied by deceased Guriya Kumari had been to *Dhanni Bahiyar* for cutting and collecting the grass at the time of the incident. It is in evidence of PW 5 Kavita Devi that when after cutting the grass she and her daughter Guriya Kumari were returning, accused Naresh Mandal came from behind and dragged her daughter Guriya Kumari to the maize field. At that field, he slit throat of her daughter Guriya by a knife. As per version of PW 5 Kavita Devi, after witnessing this incident she became unconscious and on regaining consciousness she disclosed the incident to her husband who lodged the FIR. This



witness identified the accused in the dock and has also disclosed the motive for commission of this offence by the accused. At this juncture, one will have to keep in mind that when a case is based on ocular version of the witness, motive for commission of crime is rendered irrelevant. Still as per version of PW 5 Kavita Devi which is coming on record from her cross-examination by the defence, Guriya Kumari was a witness before the Panchayat held for the incident of outraging the modesty of daughter of co-villager Amrit Mandal by the accused. In cross-examination, this eyewitness testified that the Panchayat on considering the evidence of Guriya Kumari gave a written order directing accused Naresh Mandal to pay fine of rupees five thousand for committing that incident with daughter of co-villager Amrit Mandal. This material elicited from cross-examination of PW 5 Kavita Devi speaks volume and supports the prosecution case. From cross-examination of PW 5 Kavita Devi it is brought on record that she disclosed the incident after regaining consciousness to her husband PW 6 Hiralal Thakur. Similarly, it is also brought on record from cross-examination of PW 5 Kavita Devi that when she had been to the spot for cutting the grass, she met PW 8 Ghanshyam Thakur. The relevancy of this material would be considered while appreciating evidence



of PW 8 Ghanshyam Thakur. Apart this material there is nothing worth mentioning in the cross-examination of Kavita Devi. Her evidence is not shattered at all during her lengthy and searching cross-examination. On the contrary, material elicited from her cross-examination is going against the defence of the accused and is providing a motive to the accused for eliminating Guriya Kumari. Overall scrutiny of evidence of this mother does not show that she has any reason to speak a lie against the accused, particularly, when her daughter came to be murdered brutally by cutting the neck.

8. Now let us search whether evidence of PW 5 is gaining corroboration from other evidence on record. We have already noted evidence of the autopsy surgeon. We have noted that the autopsy surgeon had found incised wound on front of neck of Guriya Kumari below the thyroid cartilage cutting large vessels of her neck on both sides. This medical evidence completely supports the version of PW 5 Kavita Devi that she show the accused cutting open the neck of her daughter Guriya Kumari by means of a knife.

9. PW 6 Hiralal Thakur is husband of PW 5 Kavita Devi and father of deceased Guriya Kumari. As per his testimony, when he returned to his house, his wife Kavita Devi



told him that the accused had slit the throat of their daughter Guriya at *Dhanni Bahiyar*. PW 6 Hiralal Thakur further stated that then he went to the spot of the incident and saw that throat of his daughter was slit open. He spoken about the lodgment of the FIR by him on the spot of the incident itself. From cross-examination of this witness, the defence has again brought on record that Guriya Kumari appeared as a witness before the Panchayat in the matter of outraging the modesty of daughter of Amrit Mandal by accused and imposition of fine on the accused by the Panchayat. Thus, though not require, the motive with the accused for commission of offence has again surfaced on record through version of the father of the deceased. This evidence of PW 6 Hiralal Thakur is also corroborating the version of his wife Kavita Devi inasmuch as this witness has also noticed cut injury on neck of their daughter.

10. The next important witness is PW 8 Ghanshyam Thakur. The defence while cross-examining PW 5 Kavita Devi has brought on record that she met with this witness PW 8 Ghanshyam Thakur prior to going for cutting the grass as well as during the course of cutting the grass. This indicates that PW 8 Ghanshyam Thakur had met PW 5 when she had gone for cutting the grass. On this backdrop it is in evidence of PW 8



Ghanshyam that on the day of occurrence, he was going to the market through the *Bahiyar* (the field) and on the way he met PW 5 Kavita Devi and had advised her to return home back early. PW 8 Ghanshyam Thakur further deposed that when he was returning from market, near the maize field of Nathu Saw he saw accused Naresh Mandal was running away with a knife in his hand. Subsequently, he came to know that the accused was running away after cutting the neck of deceased Guriya Kumari. This witness accompanied PW 6 Hiralal and noticed dead body of Guriya in the field of Nathu Saw. He acted as witness to the inquest report. Evidence of this witness that he saw the accused running away with a knife in his hand from the spot of the incident remained unshattered in his his cross-examination. This evidence is certainly relevant under Section 6 of the Evidence Act as conduct of the accused soon after the incident. The dead body of Guriya Kumari was lying in the field and PW 8 Ghanshyam Thakur had seen the accused fleeing from the spot with a knife in his hand. The essence of the doctrine of *res gestae* is that a fact though not in issue is so connected with the fact in issue “as to form part of the same transaction” that it becomes relevant by itself. Thus, by applying the principle of *res gestae* this version of PW 8 Ghanshyam fully corroborates



the evidence of PW 5 Kavita Devi.

11. PW 10 Jagdish Pandey, the Police Station Officer, had inspected the spot of the incident immediately after the incident. As per his version, the incident took place in the middle of maize field of Nathu Saw. This investigator found a pool of dried blood on the spot of the incident. The maize crop on the spot was found trampled. This version of the Investigator is also corroborating the version of eyewitness PW 5 Kavita Devi.

12. When evidence available on the record is sufficient and can be acted upon for recording conviction, the fact that other evidence was available but was not produced by the prosecution pales into insignificance. Ultimately, the evidence is to be weighed and not counted. In the case in hand, evidence adduced by the prosecution is sufficient and trustworthy. Hence non-examination of other witnesses is of no significance. Similarly, recovery of weapon is not *sine qua non* for recording conviction. Other evidence including the medical evidence is making out the case of prosecution.

13. The net result of foregoing discussion makes it clear that evidence of sole eyewitness, who is closely related to the deceased but who is a natural witness to the incident, is



found to be wholly truthful and trustworthy. That apart, the accused was having strong motive to eliminate Guriya Kumari as she had deposed against him before the Panchayat resulting in direction by the Panchayat to the accused to pay fine. Evidence on record, ocular as well as medical makes it clear that the accused slit upon the throat of the Guriya Kumari in the maize field of Nathu Saw by means of a sharp edged weapon causing her instantaneous death. We have no doubt in holding that the act of slitting neck of a twelve years old female child by the accused was with the only intention of causing her death and as such the prosecution has made out the offence punishable under Section 302 of the Indian Penal Code. However, there is no iota of evidence to infer that after commission of the offence of murdering Guriya Kumari, the accused had caused evidence of commission of the said offence to disappear with the intention of screening him from legal punishment. Therefore, we are unable to uphold conviction and resultant sentence imposed on the accused for the offence punishable under Section 201 of the Indian Penal Code.

14. In the result, the following order:-

- (i) The appeal is partly allowed.
- (ii) Conviction and resultant sentence imposed on the



accused for the offence under Section 302 of the Indian Penal Code is maintained. However, the accused is acquitted of the offence punishable under Section 201 of the Indian Penal Code.

(A. M. Badar, J)

(Rajesh Kumar Verma, J)

Mkr./-

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