

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.221 of 2021

Arising Out of PS. Case No.-40 Year-2016 Thana- DEWARIA District- Muzaffarpur

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Md. Hussain, aged about 29 years, male, Son of Mawal Miyan, R/o Village-
Bhojpatti, P.S.-Paroo, Dist.-Muzaffarpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Adv. Ms. Vaishnavi Singh, Adv. Mr. Ritwik Thakur, Adv. Ms. Kiran Thakur, Adv.
For the State	:	Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 19-09-2023

The sole appellant, who is the husband of the
deceased, has been charged, tried, convicted and
sentenced for murdering his wife by stabbing her, which
resulted in the innards of her body coming out. At the



time of the occurrence, the appellant was sleeping inside a room along with the deceased and his daughter, a toddler, which room was bolted from inside.

2. We have heard Mr. Ajay Kumar Thakur for the appellant and Mr. Ajay Mishra for the State.

3. The appellant/Md. Hussain stands convicted for the offence punishable under Section 302 of the Indian Penal Code vide judgment dated 28.01.2021 passed by the learned Additional Sessions Judge-IX, Muzaffarpur in Sessions Trial No. 640 of 2016, arising out of Deoriya (Muzaffarpur West) P.S. Case No. 40 of 2016, and by order dated 05.02.2021, he has been sentenced to undergo life imprisonment, to pay a fine of Rs. 10,000/- and in default of payment of fine to further suffer R.I. for one year.

4. The F.I.R. has been lodged by the father of the deceased, who has been examined as P.W. 6 at the Trial. On 29.05.2016, he lodged a written report that he had married to his daughter (deceased) on



18.05.2012 with the appellant. His daughter had given birth to a child, who is now three years old. For the last three months, the deceased had been residing in his house because of ill treatment by the appellant. However, there was a settlement at the social level and pursuant to such settlement, the appellant had come to his house on 26.05.2016 and had been residing with the family. On 28.05.2016, his daughter and the appellant and their child had retired in a room which was bolted from inside. In front of that room, one nephew of the informant, namely, Tanveer Alam (P.W. 2) also made his bed and slept there. In the night intervening between 28.05.2016 and 29.05.2016 at about 03:30 to 04:00 A.M., the appellant came out of the room shouting. The informant was awakened and when he came there, he saw that his daughter was bleeding from her stomach and the appellant was telling everybody present there that some one has stabbed the deceased in her stomach. Seeing his daughter unconscious, he and all the



members of his family became very perturbed and straightway took her to one Prasad Hospital at Muzaffarpur on a vehicle. On reaching the hospital, his daughter was declared dead. Thereafter, the dead-body of the deceased was brought to Deoriya Police Station. He has also stated in his written report that there was no else in the room along with the deceased except his son-in-law (the appellant). The door of the room was bolted from inside and the nephew of the informant was sleeping outside the room. The informant was also sleeping in the open. These facts were stated by him for inferring that if anybody would have come from outside, he would surely have been spotted by either the informant or his nephew/Tanveer Alam. He, therefore, expressed his doubt that the appellant has killed the deceased.

5. On the basis of the afore-noted written report, a case *vide* Deoriya (Muzaffarpur West) P.S. Case No. 40 of 2016, dated 29.05.2016, was registered



for investigation under Section 302 of the I.P.C.

6. The police, after investigation, submitted charge-sheet against the appellant, whereby he was put on Trial.

7. The Trial Court, after examining eight witnesses on behalf of the prosecution including the Doctor and the I.O., convicted the appellant for the offence under Section 302 I.P.C. and sentenced him as aforesaid.

8. Mr. Ajay Thakur, the learned Advocate, while assailing the judgment and order of conviction and sentence, has expressed complete surprise over the lodging of the F.I.R. on 29.05.2016, at about 03:30 P.M. in the day, when the deceased had died early in the morning and especially when according to the father of the deceased (informant), the appellant was the only person sleeping with the deceased inside a bolted room. He has further submitted that it appears rather strange that after killing his wife, the appellant would himself



come out of the room and would narrate an absolute naive story that he was in the room with his wife when somebody else has stabbed her.

9. Even more surprising, Mr. Thakur asserts, is the conduct of the appellant in not running away or attempting to run away from the house of the informant. As the evidence stands, the appellant continued to remain there in the house and also participated in the last rites which was attended by many persons including his own father and approximately fifty of his co-villagers. A person having committed an offence with a guilty mind, it has been argued, would never risk this.

10. Another circumstance which has really made the case interesting is that there is no evidence on record as to who all accompanied the informant to the Prasad Hospital at Muzaffarpur and that the deceased was declared dead by the Doctors there. Was the deceased alive all the way when she was taken to the hospital or had she died mid way is now known. It could



have been known only if the informant would have come out with the correct story as to the names of the persons who may have accompanied him as also the opinion of the Doctor who had examined the deceased at the first instance.

11. A dead-body with a stab wound, which may not have been necessarily self-inflicted, would not be allowed to be taken away by any Hospital Administration for the fear of legal wrangles involved in it. It is the obligation of any Doctor or Medical Institute to inform the police if there is any doubt about the death being homicidal. It, therefore, appears to be very strange that the informant brought the dead-body in an ambulance to the police station some times at around 09:00 A.M. in the morning of 29.05.2016. That was the time when the informant had all the occasion to make a complaint against the appellant or even raise suspicion against him that he might have killed the deceased as he was sleeping with her in a room which was bolted from



inside. No F.I.R. was registered then.

12. However, the police promptly proceeded to conduct the inquest; which report has not been exhibited.

13. Mr. Thakur asserts that such withholding of inquest report is not accidental, but with a purpose.

14. Though the inquest report reflects that there was a stab wound on the body of the deceased, but the timing of the inquest assumes relevance. The inquest examination was done at 09:45 A.M. in the hospital when the dead-body was found parked in an ambulance in the premises of the police station. The deceased had already died some times ago. The police, then, ought not to have proceeded with the investigation of the case or even with the inquest examination without registering the F.I.R. The F.I.R. was registered some times at 03:30 P.M. in the afternoon after the dead-body was cremated. Shortly, thereafter, the appellant was arrested.



15. The appellant, therefore, has argued that such sequence of events invites an inference that the entire story of the appellant residing in the house of the informant along with the deceased; the deceased receiving stab wound in the night; she being taken to the hospital where she was declared dead and, thereafter, her body brought to the police station for inquest proceedings but still no F.I.R. was lodged, to be absolutely incorrect.

16. The deceased, for all one might speculate, might have died in some other transaction. If not, the explanation of the appellant that somebody else has stabbed her would never have been accepted by the family members. It is not expected that the informant and others residing the house would display such a naivete' that such an explanation of the appellant would be accepted that behind the closed doors, the deceased was attacked by somebody else leading to her death.

17. Obviously, the fact is otherwise.



18. In this context, we have examined the deposition of the informant (P.W. 6), who has made divergent statements at the Trial. Was he trying to make up for the deficiency in the prosecution case that he had put-forth? He had deposed before the Trial Court that some times ago when he was sleeping in his house, a fire broke-out, which awakened him. There was fire also in the room in which the appellant and the deceased were sleeping. He knocked at the door when the appellant opened it and P.W.-6 saw the cloths burning inside the room. The fire was doused by the members of the family. He told the appellant to go back to his home, which suggestion the appellant did not accede to. P.W. 6, in fact, forced him to leave the house and threatened that if he did not go away, his parents would be informed about it. After about ten days, the appellant is said to have gone to Calcutta and again came back to his house on 26.05.2016. Thereafter, the occurrence took place on 28.05.2016.



19. Adding more seriousness and confusion to the whole issue, P.W. 6 has stated that he found three letters strewn outside the room where the deceased was stabbed, one of which was in his possession. What were the contents of such letters? We have no idea about that.

20. On 29.05.2016, P.W. 6 goes on, the appellant came out of the house. The P.W. 6 at that time was also awake. Thereafter, the appellant again went inside the room and closed it from inside. Fifteen minutes later, P.W. 6 heard the cries of his daughter (deceased), seeking his help. This again awakened him and he claims to have seen the appellant having come out the room with his daughter in his lap and in his presence, the appellant is said to have taken out the dagger from the body of the deceased. The appellant is said to have left the deceased there. The informant, thereafter, proceeded to arrange for a car for taking the deceased to the hospital.



21. P.W. 6, in his examination-in-chief, has also disclosed that the appellant accompanied him to the hospital.

22. No part of the statement of P.W. 6 appears to be correct, if compared to the statement made by him in the written report. He has admitted in his cross-examination that the appellant and his father and fifty of his co-villager had participated in the last rites of the deceased.

23. What must have been the nature of injury received by the deceased?

24. We have examined the deposition of the Doctor (P.W. 7), who conducted the *post-mortem* on 29.05.2016. The Doctor found an incised wound of 2" x 1" on the upper part of abdomen. However, with this injury, he also found the intestine of the deceased protruding out. On opening of abdominal and the chest cavities, he found laceration of liver and the abdominal cavity filled with blood. The report does not appear to



be quite in sync with the dimensions of the injury found by the Doctor. Precisely for this reason, he was questioned at the Trial as to the direction and the depth of the injury, to which he had no answer.

25. It has been argued that the injuries of 2" x 1" dimension on the upper part of the abdomen would only be uptill the epithelial layer and would not go down to the abdominal or chest cavity. Moreover, P.W. 7 had not discussed about the depth of the injury in the *post-mortem*.

26. Though the inquest report has not been brought on record, but in order to test the correctness of the statement of the witnesses and to aid us in coming to the right conclusion, we looked at the police papers and found that the inquest report did not state anything about the intestines having come out because of the cut injury.

27. In the absence of any evidence with respect to the opinion of the Doctor, who had declared



the deceased dead at Prasad Hospital, a question could be raised whether such cut was because of any surgical interference. It would be relevant here to state that the father of the deceased (P.W. 6) in his deposition has admitted that the deceased had a wound in her stomach from before. Was that wound the culprit?

28. The investigation was done by one Rajesh Kumar (P.W. 8), who is only cognizant of the development of the case post bringing of the dead-body at the police station where the inquest was performed. He has no idea nor did he ever try to investigate about what had happened before the dead-body was brought to the police station. However, he has been candid enough in stating that only after the *post-mortem* examination, the written report was filed by the informant. Immediately, thereafter, the further statement of the informant was recorded by him. He claims to have visited the house of the informant thereafter and in course of inspection, he came across a



steel knife, eight pieces of bangles and a *lungi* with blood spots. He was made to understand that the *lungi* belonged to the appellant, which he had been wearing in the last night. A small towel with blood stains was also found below the cot. Though these articles were seized and a seizure-list was prepared, but none of those articles were sent for any forensic examination.

29. Curiously, the knife did not have any blood stains.

30. Was that the weapon by which the deceased was killed? It does not appear to be so.

31. If the appellant remained in the house till he was arrested, he would, for sure, have removed the weapon of assault or at least, hid it. He would also not allow the wearing apparel used by him with blood stains left lying on the bed.

32. Who had taken out the bangles from the hand of the deceased?

33. Taking out bangles from the hand of a



person takes sometime. Was it done by the deceased herself or by the appellant or was it done before the deceased was taken for treatment for some disease or for some injury? Mr. Thakur asserts that normally while going to hospital, people leave behind their ornaments.

34. The place where the bangles were found also assumes importance. The bangles were found kept beneath the mattress of the bed where the occurrence is said to have taken place.

35. Where was the deceased stabbed?

36. There is no answer to this question in the entire record.

37. Had the deceased been stabbed on the bed, there would have been blood marks. The I.O. did not find any blood spots either fresh or stale in the room or any other article kept there. The room, which was visited by him, was found to be well arranged and not ransacked. If there would have been a fight between the appellant and the deceased before the murder, the



room would not have been so squeaky clean and things kept in apple-pie order.

38. Subhash Bhagat, Manoj Chaudhary and Mustafa Mansoori @ Gulam Mustafa, who have been examined as P.Ws. 1, 3 and 4 respectively are only hearsay witnesses, who claimed to have come to the house of the informant and there only, they learnt that the deceased was killed by the appellant.

39. An important witness, namely, Tanveer Alam (P.W. 2) has further confounded the story. He reiterates, as he did before the police, that he had slept in that night outside the room which was occupied by the appellant and the deceased. At approximately 3 to 4 O'clock in the morning, the appellant came out shouting from his room and explained that the deceased had been hit by a knife by somebody. He went inside the room and found that the deceased was bleeding from her stomach. She was taken to hospital where the Doctor declared her dead. When he went inside the room, he



had also noticed that the bangles had been taken out from the hands of his sister and kept beneath the bed. He was specific in making this statement that those bangles were not found to be thrown, but only kept safely. The *lungi* which the appellant had worn in the last night was but thrown beneath the bed.

40. We have noted the recovery *memo* where the *lungi* was found spread on the bed. P.W. 2 also noticed a small towel. Both the *lungi* and the towel had blood spots.

41. P.W. 2 has further told the Trial Court that the appellant, of his own, accompanied all of them to the hospital and also participated in the last rites. He never made any attempt to run away from the house.

42. What is important to note is that even before the last rites were performed, P.W. 2 asserts, the members of the family had suspicion on the appellant because he was sleeping inside the room with the deceased, with the doors bolted from inside. If this was



in the mind and consciousness of P.W. 2 and other members of the family, there was no reason for not lodging the F.I.R., when the deceased had already been declared dead and the dead-body had been brought to the police station.

43. We have also found that the deceased had many sisters and brothers, all of whom were present in the house on the day of the occurrence. However, none of them have been examined at the Trial. No female member of the house has been examined.

44. Was it then the afterthought of the male members of the family to make out a case explaining the death of the deceased by blaming the appellant? The circumstances reveal that there could be truth in such supposition.

45. Section 8 of the Indian Evidence Act, 1872 spells out the relevance of previous or subsequent conduct of people involved in an occurrence.

46. The conduct of the appellant in never



trying to run away from the house of the informant; accompanying the injured to the hospital and when she was declared dead, to the police station; and permitting his father and co-villagers to participate in the last rites; are such instances which demonstrate his innocence.

47. The question thus is as to who would have killed the deceased. Definitely not a ghost, who could enter the room without being spotted or without being held back by so many persons in the house. This, therefore, permits of the inference that the deceased died in some other transaction. The supporting grounds for the afore-noted hypothesis are the findings of the I.O. that things were kept in order in the room and the room was found to be perfectly organized.

48. With the injury of such small dimension on the upper part of the abdomen, the deceased would not have died instantly. If one cannot fathom as to who caused such injury, at least this much could be speculated that the deceased would have survived for



sometime, if she had not bled so much as to leave behind any trace of blood. One is again reminded of the already existing wound on the stomach of the deceased, as confirmed by her father. Was it that the wound got ruptured in the night, requiring medical emergency. The death of deceased meant the end of the relationship, which was pretty strained for a while, between the family of the deceased and the appellant. One could speculate that the qualms for falsely implicating the appellant would have been non-existent by that time.

49. Did she speak on way to the hospital?

50. There is no medico-legal certificate on record indicating the condition under which she was brought to the hospital.

51. This, Mr. Thakur rightly asserts, gives rise to the suspicion that the appellant has wrongly been framed in this case.

52. This takes us to the Section 313 Cr.P.C. statement of the appellant.



53. Before discussing about the laconic questions put to him, evoking an equally laconic answer, we deem it appropriate to list the incriminating circumstances appearing against the appellant in the case.

54. The appellant slept in the same room as that of the deceased with its door bolted from inside. The appellant came out shouting that somebody else has killed the deceased. Three letters were found outside the room, one of which was in the possession of the informant when he was deposing before the Trial Court. The appellant did not have cordial relations with the deceased in immediate past and he had come to the house of the informant only after a settlement had been arrived at. The appellant had resided with the deceased in the house of her father for about ten days when the appellant had gone to Calcutta and had come back again on 26th of May, 2016.

55. These incriminating circumstances were



never put to the appellant under Section 313 Cr.P.C. All that the Trial Court asked from him was whether the allegation against him of killing the deceased is true, to which he denied.

56. The law on the aspect of the importance of Section 313 examination of an accused has now been so well settled that it requires no further deliberation.

57. However, it would be with profit only to refer to a judgment of the Supreme Court in **Raj Kumar alias Suman v. State (NCT of Delhi); AIR 2023 SC 3113**, wherein the Bench had referred to a number of decisions on Section 313 Cr.P.C. and its importance and has very pithily summarized the requirements under the Code.

58. The Bench, after referring to the judgments in **Tara Singh v. State: AIR 1951 SC 441; Shivaji Sahabrao Bobade v. State of Maharashtra: AIR 1973 SC 2622; S. Harnam Singh v. State (Delhi Admn.): AIR 1976 SC 2140**, has summarized the law



as follows:-

"16. The law consistently laid down by this Court can be summarized as under:

(i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;

(ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

(iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;

(iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the



considerations will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

59. The Trial Court, in this instance, has very lightly dealt with the requirement under Section 313 Cr.P.C. and has practically put no incriminating circumstance to the appellant for him to answer.

60. Such scant attention to the statutory as also a salutary provision under Section 313 Cr.P.C. cannot be ignored by us. This in itself, we dare say,



vitiates the conviction of the appellant.

61. This leave us with another postulate to ponder over.

62. In the facts of this case whether the option of remand would be just and appropriate?

63. We have given an anxious consideration over the matter and have found that even otherwise, *sans* the requirement of Section 313 Cr.P.C. having been paid scant attention to by the Trial Court, the prosecution story, at many stages, degenerates into a cock and bull story, not worthy of ready acceptance.

64. We, therefore, are of the view that remand in this case would not be appropriate.

65. Accordingly, we allow this appeal.

66. The judgment of conviction and order of sentence dated 28.01.2021 and 05.02.2021 respectively passed by the learned Additional Sessions Judge-IX, Muzaffarpur in Sessions Trial No. 640 of 2016, arising out of Deoriya (Muzaffarpur West) P.S.



Case No. 40 of 2016, are set-aside and the appellant/Md. Hussain is acquitted of the charges levelled against him, giving him the benefit of doubt.

67. The appellant/Md. Hussain is in custody. He is directed to be set at liberty forthwith unless his detention is required in any other case.

68. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

69. The records of this case be returned to the Trial Court forthwith.

70. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

Praveen/amitkumar

AFR/NAFR	AFR
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