

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.316 of 2022

Arising Out of PS. Case No.-11 Year-2006 Thana- SHANKARPUR District- Madhepura

Sumitra Devi, wife of Late Suresh Prasad Yadav, D/o Kuldeep Narayan Singh,
Resident of Village-Bathan Parsa, P.S.- Shankarpur, District- Madhepura.

... .. Appellant

Versus

1. The State of Bihar
2. Siya Devi, Wife of Surendra Prasad Singh @ Surendra Prasad Yadav,
Resident of Village - Bathan Parsa, P.S. - Shankarpur, District - Madhepura.
3. Prabhat Kumar @ Santu Yadav, S/o Surendra Prasad Yadav, Resident of
Village - Bathan Parsa, P.S. - Shankarpur, District - Madhepura.

... .. Respondents

Appearance :

For the Appellant/s : Mr.Amarnath Jha, Advocate
For the Respondent/s : Mr.Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

C.A.V. ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

14 25-08-2023 Heard learned counsel for the parties at the stage of
admission itself.

2. The present criminal appeal is preferred against the
judgment of acquittal dated 21.02.2022 passed by learned
Additional Sessions Judge-II, Madhepura in Sessions Trial No.
127 of 2013/C.I.S. No. 1544 of 2013, arising out of Shankarpur
P.S. case No. 11 of 2006, corresponding to G.R. Case No. 373
of 2006 whereby Respondent Nos. 2 and 3 of the present
criminal appeal have been acquitted by the learned Trial Court



for the charge under Sections 120(B) read with 302, 328 and 302 of Indian Penal Code.

3. Vide order dated 09.01.2023, lower Court records was called for and thereafter vide order dated 15.03.2023, notices were issued to Respondent Nos. 2 and 3 upon which they appeared on filing Vakalatnama.

4. The lower Court records has been received.

5. The prosecution case as per the fardbeyan of informant Sumitra Devi dated 27.04.2006 is that one year ago i.e. on 07.04.2005, the accused persons namely Surendra Prasad Yadav, Siya Devi and Prabhat Kumar conspired together and mixed the poison in the milk, which got drunk by her daughter unknowingly. When her daughter Deepika started vomiting and became unconscious, she was brought to the clinic of Dr. J.B.Singh along with the accused persons. Her daughter started recovering there. On 08.04.2005, despite forbidding by the doctor, Prabhat Kumar @ Santu administered milk mixed with Sattu to her daughter Deepika Kumari. After some time, her daughter Deepika Kumari was died. She became unconscious. Taking the benefit of her unconscious and to save their skin from the case, the accused persons got recorded her fardbeyan to the police. Later, after three months when she became well



and got aware of the conspiracy in the killing of her daughter by the accused persons, she filed written information to Shankarpur SHO but no action was taken. The informant stated that in the year 1990, her husband was died and she started living along with her sole daughter. In the year 2001, her father-in-law gifted the land of her share 17 bigha to the wife of her husband's brother (gotni) Siya Devi. After the death of her husband, her bhainsur Surendra Prasad Yadav, his wife Siya Devi and son Prabhat Kumar @ Santu taken several efforts to drove away her from the house and also started torturing her for which she filed informatory petition before the Court of SDM, Madhepura. The accused persons had murdered her daughter in order to grab her property.

6. On the basis of fardbeyan of the informant, Shankarpur P.S. case No. 11/06 dated 27.04.2006 was registered and formal FIR was drawn. After completion of investigation, final form has been submitted against the accused persons mentioning the case to be mistake of fact. The learned Chief Judicial Magistrate took cognizance against the accused and committed the case to the Court of Sessions on 06.04.2013. Charges were framed against the accused persons on which they pleaded not guilty and claimed to be tried.



7. During the trial, the prosecution examined altogether 19 witnesses viz. PW1 Kamta Prasad Singh, PW2 Krishn Kumar Singh, PW3 Nimi Devi, PW4 Sumitra Devi, PW5 Dr. Kishore Kumar, PW6 Arvind Yadav, PW7 Laxman Yadav, PW8 Jai Prakash Das, PW9 Ratan Rishideo, PW10 Vijendar Yadav, PW11 Vijay Kumar Roy, PW12 Arun Kumar Roy, PW13 Deep Narayan Mehta, PW14 Sibb Pandit, PW15 Rupesh Kumar Jha, PW16 Sahabuddin, PW17 Ram Bilash Rajak, PW18 Rameshwar Prasad Yadav, PW19 Vinod Kumar Jha. The prosecution has also produced exhibits as Ext. 1 written information, Ext. 2 signature of informant on the protest petition, Ext. 3 post-mortem report, Ext. 4 FSL report, Ext. 5 Attendance Certificate, Ext. 6 fardbeyan of UD Case No. 1/5 dated 11.04.2005, Ext. 7 photo copy of sale deed, Ext. 8 certified copy of plaint of Partition Suit No. 80/2001. The defence has got exhibited signatures of Sumitra Devi and Arvind Kumar as Ext. A and Ext. A/1 on Ext. 6. After closure of evidence, the statements of accused persons were recorded under Section 313 Cr.P.C. and after conclusion of the trial, learned trial Court has acquitted the accused persons.

8. In criminal appeal against acquittal what the appellate court has to examine is whether the finding of the



learned court below is perverse and *prima facie* illegal. Once the appellate court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court passed in the case of ***Surajpal Singh & Ors. v. The State*** reported in ***1952 SCR 193***, wherein it was observed that:

"..the High Court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

In the case of ***Ghurey Lal v. State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** in para no. 75, the Hon'ble Supreme Court re-iterated the said view and observed,

"The trial Court has the advantage of watching the demeanour of the witnesses who have given evidence; therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless



it is totally perverse or wholly unsustainable.”

9. The grounds considered by the learned Trial Court for acquittal are as under:

(i) PW 4 (Informant) and PW 6 witnessed and signed Ext. 6, i.e., Fardbeyan UD Case no. 1/5 dt. 11/04/2005, in which the informant mentions that the deceased swallowed a tablet placed in grains (insecticide), causing her to become unconscious and subsequently died during the treatment.

(ii) There was a delayed filing of the case, which was done more than a year later, on 27.04.2006. The narrative was changed in the written information, accusing accused Prabhat Kumar of mixing poison in milk. Inconsistencies in versions are apparent; Ext.-1 (Written information – Present case) differs from the initial version Ext.-6 (UD Case). The police submitted the final form for the present case mentioning mistake of fact.

(iii) The informant attributes the delay to her illness; she became unconscious at the time of her daughter's death. However, no supporting evidence regarding her illness was filed by the prosecution. Further, the signature on Ext.-6 by Informant appears clear, indicating that she was not in an unconscious state.

(iv) PW 1 and PW 2 are the informant's



brothers, and PW 3 is the niece. PW 1 states that no occurrence happened before him. Contradicting this, PW 6 (eye witness) contradicts the presence of PW 2 and PW 3 at the scene and the clinic. Most prosecution witnesses state that the deceased died due to self-administered poison, not due to the actions of the accused. PW 15 (Compounder) specifies that the deceased died due to swallowing insecticide.

(v) Ext.-3 (postmortem report) and Ext.-4 (FSL report) indicate the presence of aluminium phosphide in the deceased's viscera, a substance used as an insecticide.

10. After hearing the arguments advanced by the learned counsel appearing for both the parties and upon examining the material available on the record, the following issues arise for consideration before this Court:

(I) Whether the delay in lodging an FIR can be justified?

(II) Whether the signature of the informant on the UD case can be relied upon as credible evidence?

(III) Whether variations in narratives regarding the deceased's demise and inconsistencies between the ocular evidence and medical report diminish the credibility of



the prosecution's case?

11. With reference to issue no. (I), upon careful examination of the written information (Exhibit 1), it comes to light that the Informant (PW 4) experienced a lapse of consciousness subsequent to her daughter's demise. Furthermore, it has come to attention of the court that the Informant claimed that three months after regaining her faculties, she submitted a written complaint to the SHO. Notably, the Informant's deposition includes references to having submitted petitions to the SDO, SP Madhepura, and the Chief Minister, leading to the initiation of the present case. It is, however, imperative to underscore that the prosecution has not furnished material evidence on record to substantiate these assertions. Consequently, the absence of compelling proof renders the delay in lodging the First Information Report for the present case unsupported and bereft of validation. It is well established principle that there should be promptness in lodging of the FIR to obtain the earliest information regarding the incident and to make the investigation just and fair and to avoid any possible foul play. Such delay often results in concoction and embellishment of the occurrence. It is, therefore, imperative for the prosecution to adequately explain and substantiate such



delays in order to alleviate any suspicions. In this context, reference is made to the decision of the Hon'ble Supreme Court in the case of ***Bhagaloo Lodh v. State of U.P.***, reported in ***(2011) 13 SCC 206***, wherein the paragraph 10, it has been observed that:

“10. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case there is some delay in filing the FIR, the complainant must give explanation for the same. In absence of such an explanation, the delay may give presumption that allegations/accusations were false and had been given after thought or had given a coloured version of events. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. (Vide Sahib Singh v. State of Haryana [(1997) 7 SCC 231 : 1997 SCC (Cri) 1049 : AIR 1997 SC 3247] ; GorigePentaiah v. State of A.P. [(2008) 12 SCC 531 : (2009) 1 SCC (Cri) 446] and Kishan Singh v. Gurpal Singh [(2010) 8 SCC 775 : (2010) 3 SCC (Cri) 1091 : (2010) 3 SCC (Civ) 583 : AIR 2010 SC



3624/.)”

In the light of the discussions made above, this Court holds the perspective that the undue delay observed in the informant's lodging of the First Information Report, particularly accompanied by the emergence of a new narrative, gives rise to substantial doubts and strongly undermines the prosecution's case.

Accordingly, the issue no. I is decided in the negative.

12. With reference to issue no. (II), a meticulous examination of the written information and the testimony of PW 4 unveils a circumstance where the accused, seemingly to shield themselves, procured the Informant's signature on a blank sheet in collusion with the police. It is pertinent to take note of the paragraph 16 of PW 4 testimony, wherein the informant refutes her signature and the statement made in the *UD case* recorded as Ext.6, wherein she previously stated that her daughter's demise was attributed to the ingestion of poison (insecticide) from grains. Notably, however, in paragraph 14 of PW 4's deposition, she asserts that Police forcefully obtained her signature on a blank sheet, an act she resisted, yet she did not register a complaint with the SP/DSP, or the court. It is of significance that PW 6, a signatory to the *UD case*, affirms that the Informant was conscious while signing the fardbeyan in the



UD case. This assertion gains additional credibility through the testimony of PW 19, the ASI accountable for recording the Informant's statement in the *UD case* in the hospital, who confirms the voluntary nature of the Informant's cooperation. In light of these considerations, the Court is inclined to uphold the Informant's signature on the *UD case* as a reliable and credible piece of evidence.

Accordingly, the issue no. II is decided in the affirmative.

13. With reference to issue no. (III), the comprehensive deliberations thus far have led to the recognition of two distinct narratives concerning the demise of the deceased. The *UD case* mentions that the deceased died due to insecticide ingestion from the grains, while the present case asserts that the accused administered poison to the deceased. To substantiate the current narrative, the prosecution has presented testimony from 19 witnesses, notably, only PW 2, PW 3, and PW 4 are direct witnesses to the current version of events. It is of significance to underscore that all these eyewitnesses are closely related to the informant. However, a discrepancy arises regarding the presence of PW 2 at the time when poison was allegedly administered to the deceased. Notably, this absence of mention is conspicuous in



both the deposition of the informant (PW 4) and the statement of PW 3. This omission assumes particular significance in light of the medical evidence at hand. The FSL report, marked as Exhibit 4, discloses the presence of aluminium phosphide—a component of insecticides, that was present in the deceased's viscera, thereby aligning with the application of insecticides. At this juncture, we put reliance upon the case of ***Ram Narain Singh v. State of Punjab*** reported in ***(1975) 4 SCC 497*** wherein the Hon'ble Supreme Court has held that disparities between ocular and medical evidence are a foundational flaw in the prosecution's case and, unless adequately explained, are sufficient to discredit the entire case.

Accordingly, the issue no. III is decided in the affirmative.

14. In summation, the meticulous examination of the evidence, deliberations, and testimonies presented before this Court have led to a considered and comprehensive understanding of the issues at hand. The proceedings have shed light on crucial aspects of the case, including the delayed lodging of the First Information Report, the credibility of the Informant's signature within the *UD case*, and the disparities between different versions of the incident. These aspects have



collectively given rise to a substantial cloud of doubt over the prosecution's case. This Court, guided by the principles of fairness and the pursuit of truth, has diligently evaluated the evidence and come to the conclusion that the trial Court's judgment stands as a reasoned and well-founded decision. Its assessment, rooted in a balanced analysis of the available evidence, remains unmarred by any evident irregularities or biases. In light of these considerations, no justifiable basis exists for interference with the impugned judgment.

15. Accordingly, the appeal against the judgment of acquittal dated 21.02.2022 passed by learned Additional Sessions Judge-II, Madhepura in Sessions Trial No. 127 of 2013/C.I.S. No. 1544 of 2013, arising out of Shankarpur P.S. case No. 11 of 2006, corresponding to G.R. Case No. 373 of 2006, is dismissed at the admission stage itself.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

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