

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.920 of 2016

Arising Out of PS. Case No.-29 Year-2014 Thana- SOHSARAI District- Nalanda

Dayanand Paswan @ Lal Baba @ Baba Son of Amirak Paswan, Resident of
Village- Jyab, Police Station- Asthawa, District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 960 of 2016

Arising Out of PS. Case No.-29 Year-2014 Thana- SOHSARAI District- Nalanda

1. Ranjeet Patel S/o Late Kedar Nath,
2. Kalawati Devi, Widow of Late Kedar Nath,
Both residents of Mohalla- Mansur Nagar, P.S.- Sohسرائي, Dist- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1333 of 2017

Arising Out of PS. Case No.-29 Year-2014 Thana- SOHSARAI District- Nalanda

Sudha Kumari @ Sudha Devi Wife of Sri Ranjeet Patel Resident of Mohalla-
Mansur Nagar, P.S.- Sohسرائي, District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 920 of 2016)

For the Appellant/s : Mr. Rajesh Kumar Singh, Adv.
Mr. Anil Kumar Singh, Adv.

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 960 of 2016)

For the Appellant/s : Mr. Binod Kumar Sinha, Adv.

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 1333 of 2017)

For the Appellant/s : Mr. Binod Kumar Sinha, Adv.

For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH



ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 06-07-2023

All the three appeals have been taken up together for hearing. However, after the arguments were advanced, Mr. Binod Kumar Sinha, learned advocate appearing in two of the appeals has informed us that appellant/Kalawati Devi in Cr. APP (DB) No. 960 of 2016 has died. He has brought on record a death certificate of the appellant/Kalawati Devi.

2. Priya Kumari, a five year old daughter of Rajiv Patel (P.W.3) and Juli Patel (P.W.2), was strangulated to death whose dead body was recovered from behind the house occupied by the Informant and his wife and the accused persons who are none else but the own brother and sister-in-law of P.W.2 and their mother namely Kalawati Devi who is reported to have died during the pendency of the appeal.



3. Mr. Binod Kumar Sinha has informed this Court that appellant/Kalawati Devi was released on bail vide order dated 18.07.2017 and she has died only recently.

4. As such, the appeal of Kalawati Devi abates.

5. The motive ascribed to the accused persons/appellants for killing the deceased is the advice of one of the appellants namely, Dayanand Paswan @ Lal Baba @ Baba (Cr. APP. (DB) No. 920 of 2016) who had exercised magical spell on appellant/Ranjeet Patel and his wife Sudha Kumari @ Sudha Devi to sacrifice a female child of the house so as to beget a male child. The accusation against the appellants thus is of having conspired to kill the daughter of the Informant for such purposes.

6. Rajiv Patel (P.W.3) had lodged the FIR on 08.04.2014 at Sohsarai police station alleging that on 07.04.2014 i.e. a day before his five year old daughter was not to be found in the house. He was telephonically informed by his wife (P.W.2) on which he came back home



and tried to search for her daughter. On 08.04.2014, a Station Diary Entry was recorded in Sohsarai Police Station about his daughter having gone missing from the house. To investigate such report, the police officers had been visiting his house. The people of the neighborhood were also making efforts to find out his daughter. However, at 9:30 pm on 08.04.2014, it was learnt that the dead body of his daughter who had already been killed by strangulating her by appellants Ranjeet Patel, his wife Sudha Patel and the mother of the Informant viz. Kalawati, was thrown outside the house near a well. P.W.3 also learnt that the dead body was also carried out of the house through the kitchen door after switching off the lights of the ground floor where the appellants resided. It was then that the police party arrived and recovered the dead body. For about two months, P.W.3 asserted that the appellants/Ranjeet and his wife Sudha were in constant contact with appellant/Dayanand Paswan @ Lal Baba @ Baba who had advised the couple to sacrifice a female



child of the house for them to beget a male child. This, it was alleged, was the purpose of killing his daughter.

7. On the basis of aforementioned written report by P.W.3, Sohsarai P.S. Case No. 29 of 2014 dated 08.04.2014 was instituted for investigation under Sections 302, 201 and 34 of the I.P.C.

8. Shortly thereafter, the appellants/Ranjeet Patel and Sudha Patel along with their mother were arrested by the police.

9. During the trial, P.W.3 though supported the prosecution version but did not claim to have seen the appellants taking out the dead body and throwing it behind the house. All that he has asserted is that when in course of search, he along with other members of his family were on the first floor of the house, the lights of the ground floor, where the appellants resided, was switched off and they could hear a thud sound from some distance. On proceeding towards the direction from which the sound had come, it was seen that the appellants were returning to



their home. He also knew about the fact that Ranjeet and Sudha had been in close contact with Dayanand Paswan @ Lal Baba for religious advice for begetting a male child. He has admitted in his cross-examination that the relationship between all the brothers who resided in the same house along with the families had been very cordial and there was no suspicion against any one of them. The mother was looked after by all the brothers, with whom also P.W.3 had good relations. After the dead body was spotted by him and others, he had informed the police. Blood was coming out of the mouth of the deceased. The deceased was taken to the hospital where the dead body was put to postmortem examination. Cremation took place a day after the dead body was released in his favour. The FIR was registered thereafter. He has repeatedly said before the Trial court that he did not see anybody killing the deceased. However, he has denied the suggestion that he has falsely implicated his brother, sister-in-law and mother. He had no personal idea about Lal Baba @ Baba



and he had never met him. All that he knew about Lal Baba was that he resided in a nearby temple where he worshiped goddess Kali.

10. Mukesh Kumar (P.W.7) is the I.O. of the case who had visited the house of the Informant (P.W.3) on 08.04.2014 in the morning in connection with verification of the information regarding the deceased having gone missing from the house. While he was returning to the police station from the house of P.W.3, he again learnt that a dead body has been recovered. He went to the place where the dead body was found and sent it for postmortem after preparing the inquest report.

11. During the course of investigation, he found that there was a common house which was occupied by P.W.2 and P.W.3 and the appellants/Ranjeet, Sudha and Kalawati who was alive at that time. The appellants/Ranjeet, Sudha and Kalawati were found to be residing on the ground floor whereas P.W.3. along with P.W.2 were occupying the first floor of the house.



12. During the course of investigation, he had gone into the room of Ranjeet and Sudha and located a trunk in which the dead body was concealed for sometime. The F.S.L. team had seized the aforementioned trunk. Before the Trial court, the same statement was made by him that the dead body was taken out of the house through the kitchen door and thrown near a well on a public land. He had arrested the appellants there and then. In his cross-examination, he has admitted that no witness had told him during the investigation that they had seen the deceased being killed or that they had seen the dead body being thrown. Only the maternal grandparents of the deceased and P.W.3 stated that they saw the appellants rushing back home after throwing the dead body. He could find no evidence of any bad relation between the brothers. It was only during the investigation that he learnt that the purpose of killing was to beget a male child which was on the advice of a local sorcerer viz. the appellant/Dayanand Paswan @ Lal Baba @ Baba. However, even with this



information with him, he had never visited Lal Baba or inquired anything about his credentials. Nobody provided any details about aforementioned Lal Baba during the course of investigation. From near the dead body, he had found one of the pair of red slippers of the deceased. In his presence, the FSL team had picked the articles found in the room of Ranjeet and Sudha and he had sought permission from the C.J.M (Ext.6) for sending the sealed items for forensic examination.

13. During the course of investigation, Sudha is said to have given her confession. The pair of slippers which was found by him was not put to the parents of the deceased for identification.

14. Thus from the evidence of I.O, (P.W.7), no link appears to be established between Ranjeet, Sudha and Kalawati on one hand and Dayanand Paswan @ Lal Baba @ Baba on the other. There is no evidence of any conspiracy to eliminate the girl child of the house. No witness has spoken about either Lal Baba having visited



the house or having advised Ranjeet and Sudha to sacrifice the deceased. This was just the guess-work and the rumour which he had heard during the course of investigation.

15. The names of the persons who doled out such information were not given by either P.W.3 or P.W.7. Thus the religious advice or exhortation of Lal Baba was presumed by the witnesses and the Investigating Officer. Had any concrete information come to either the Informant or the I.O., efforts would have had been for contacting Lal Baba or subjecting him to further interrogation. The I.O., as noted above, did not even go to the temple where Lal Baba resided. Thus, a rumour and a suspicion was believed to be sacrosanct and the investigation proceeded only on such suspicion.

16. From the evidence of the witnesses, it appears that Lal Baba had never visited the house where the appellants or the witnesses resided or else P.Ws. 2 and



3 would have said so. None of the prosecution witnesses had gone to Lal Baba along with Ranjeet and Sudha.

17. The postmortem report was prepared by Dr. Pramod Kumar Singh (P.W.6) who has found a ligature mark present all around the neck of the deceased. The tongue was protruding from the mouth. Rigor mortis was present in all the four limbs. A putrid smell was coming from the dead body suggesting that there had been quite some time that the death had taken place. The tracheal ring was found to be flattened and the hyoid bone was also fractured. The time fixed by the doctor of the death was within two to seven days of the postmortem examination. The Postmortem examination was done on 09.04.2014 at 7:00 am. With this evidence on record, it can be presumed that the deceased died sometimes on 07.04.2014.

18. There is no evidence as to who killed her and for what.

19. However, Runa Devi, another sister-in-law of the Informant, who also resided in the same house and



has been examined as P.W.1, has stated that on 07.04.2014, the deceased was playing in front of the house along with her daughter. She thereafter, went to her mother and asked for some eatables. She was given a bread. Holding the bread in her hand, she had gone inside the room of Sudha from where she disappeared. There was no suspicion on anybody but, frantic search was made for her by all the family members and the neighbors. Announcements were also made on public address system that the daughter of the house had gone missing. When the police party had arrived at her house, some of the police personnel came to the first floor of the house where P.W.2 and P.W.3 resided. Suddenly, lights of the ground floor were switched off. Under the cover of darkness, she has alleged, the dead body was taken out of the house through the kitchen door and thrown near a well. She has also stated that from the room of Sudha, a foul smell was coming. She and others went inside the room and found a trunk, the cover of which was left ajar. There were a few



articles scattered including a blood stained cloth. One of the pairs of slippers also was found in the trunk. Uneaten piece of bread was also found kept in the trunk.

20. This was the starting point for suspecting the hands of Ranjeet, Sudha and Kalwati Devi. P.W.1 also had heard the rumour that Lal Baba had advised Sudha and Ranjeet to kill the deceased as a "tantaric" practice for getting a male child. However, she has admitted during the cross-examination that the relationship between the families of the brothers residing in that house was very cordial.

21. What could then have been the reasons for killing the deceased? But, before that, it was required to be established that the deceased was killed by the appellants.

22. The appellants are the uncle, aunt and grand-mother of the deceased.

23. The Maternal grand-parents of the deceased namely, Sangeeta Devi (P.W.4) and Ranjeet Prasad



(P.W.5) though have supported the prosecution story but their statements appear to be conjectural and motivated. On hearing about the deceased having gone missing, both of them had come to the house of the Informant and had stayed back in the night of 07.04.2014 and whole of the day of 08.04.2014. They had also participated in the search of the deceased but to no avail. Both the witnesses have however stated that when they were on the first floor of the house, they heard a sound as if something had been dumped at some distance and when they came out to see, both of them claimed to have seen Ranjeet, Sudha and Kalawati rushing back to the house after throwing the dead body.

24. From the circumstances explained, the lights in the ground floor was switched off and there was no lighting from the house to the place where the dead body was found. The dead body was definitely found at the place indicated in the prosecution case which was first spotted by P.W.3 and thereafter the other family



members. It was only then that the police party had arrived. However the statement with respect to foul smell coming from Sudha's room has only been made by P.W.1.

25. The mother of the deceased/Juli Patel (P.W.2) has though supported the prosecution case but only on the suspicion that the murder was executed on the advice of Lal Baba for the couple (Ranjeet and Sudha) to get a male child.

26. Till the time the dead body was recovered, P.W.2 was stay put in the house but, she did not know anything. She had never visited Lal Baba ever and had learnt about him only from the people residing in the same locality.

27. Thus, so far as the ocular testimony is concerned, the only material collected against the appellants is the deposition of the grandparents of the deceased who claimed to have seen the appellants rushing back home after throwing the dead body.



28. It is difficult to believe such statements for the reason that there was darkness all around and such statements appear to have been made out of a presumptive knowledge that the appellants only had killed the deceased for a particular purpose; which purpose could not been proved during the trial.

29. There is yet another loophole which assumes significance. There is no evidence as to the reason for calling the F.S.L. team for seizing the trunk from the room of Sudha, which could have been done by the Investigation Officer himself. Nonetheless, if the trunk along with its contents was seized by FSL team, an inventory ought to have been prepared of the contents of the trunk. Unfortunately, no such inventory is on record nor is there any statement establishing that such inventory was made. The only material that we have before us is the letter of the I.O. seeking permission from the court to send the sealed items for CFSL examination.

30. The report of the CFSL is not on record.



31. Neither has it been referred to nor has it been asked for by the Trial Court.

32. Thus, the recovery of the trunk from the room of Sudha becomes doubtful. If there would have been evidence of recovery of a trunk which contained a blood stained clothes, cloth rope with which murder would have been executed and one of the pairs of slippers used by the deceased, that would have been an important link evidence to connect Sudha, Ranjeet and even Kalawati to the offence. This could have been one of the most clinching evidence against all the appellants residing in that house. That piece of evidence, not having been projected or established, the implication of Ranjeet, Sudha and Kalawati therefore is only presumptive, but without any basis.

33. We have been scouting for circumstances against appellants but, except for rumoured information that Lal Baba had advised the couple to sacrifice the female member of the house for a male child, there is no



other material for us to even point at the appellants for their having conspired and killed the deceased.

34. The chain of circumstances remain absolutely unforged.

35. Before any case against an accused can be said to be fully established on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn must be fully established and the fact so established should be consistent only with the hypothesis of the guilt of the accused.

36. There has to be a chain of the evidence so complete, as not to leave any reasonable doubt for any conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused.

37. It does not need any repetition as it has been settled by a plethora of judicial pronouncements of the Supreme Court and this Court that suspicion howsoever is strong, cannot take the place of proof.



38. An accused is presumed to be innocent.

39. It is one of the primary principles of criminal jurisprudence that an accused "must be" and not merely "may be" guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.

40. Even though there is no evidence of any outsider having come to the house or there being any motive of anybody else of killing the deceased, but negatively, this could not be the reason for pointing finger at the inmates of the house and saddling them with the act of murder.

41. The fact that the deceased was murdered in the house was required to be established. With the absence of any recovery memo or the report of the FSL, such evidence is non-existent. Only because the dead body of the deceased was found behind the house and one of the couples residing in the house were issueless, that



would be no reason to doubt about the unholy alliance between the appellants and Lal Baba.

42. It appears to be rather strange that even though many persons spoke about Lal Baba before the I.O. but no attempt was made to trace any connection between Lal Baba and his magical spell on Sudha and Ranjeet and also on the eldest lady of the house namely Kalawati (since deceased).

43. Can a rumour or a hearsay information qualify as evidence to use it against the suspects.

44. The answer has to be in the negative.

45. That no one else could have killed the deceased would be no ground to convict the appellants against whom there is no evidence; even remote. It is really shocking that a toddler who could not have ever resisted anything, was done to death. If she was killed for the purpose of begetting another life, then that act could not have been more dastardly but, mere sentiments would



not be enough and that also for convicting close relatives of the deceased.

46. We have given anxious consideration to the entire gamut of facts collected during the trial and have taken special consideration of the fact that the relationship between the appellants and P.Ws. 2 & 3 was never strained.

47. Under such circumstances, we do not find any justification for the Trial court to rely on hearsay and rumours and treat those as evidence against the appellants.

48. For the aforementioned reasons, we set aside the impugned judgment and order of sentence dated 17.08.2016 and 26.08.2016 respectively passed by the learned Additional Sessions Judge- IIIrd, Nalanda at Bihar Sharif in S.T. No. 24 of 2015, Trial No. 120 of 2015 arising out of Sohsarai P.S. Case No. 29 of 2014.

49. The appellants Dayanand Paswan @ Lal Baba @ Baba (Cr. App. (DB) No. 920 of 2016), Ranjeet Patel



(Cr. App. (DB) No.960 of 2016) and Sudha Kumari @ Sudha Devi (Cr. App. (DB) No.1333 of 2017) are in custody. They are directed to be released forthwith from jail if not required or detained in any other case.

50. A copy of the judgment be transmitted to the Superintendent of the concerned jail for record and compliance.

51. The records of this case also be sent back to the Trial court.

52. The appeals are allowed.

53. The appeal of Kalawati Devi abates.

(Ashutosh Kumar, J)

(Shailendra Singh, J)

rishi/-

AFR/NAFR	AFR
CAV DATE	NA
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