

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.631 of 2002

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Pintu Kumar Singh, son of Dinesh Singh, resident of Mohalla-East
Dahiyawan, P.S.-Chapra Town, District-Saran at Chapra.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ravi Bhardwaj, *Amicus Curiae*

For the Respondent/s : Mrs. Anita Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 09-01-2024

The present appeal has been preferred by the appellant-convict under Section-374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction and order of sentence dated 05.10.2002 passed by learned 7th Additional Sessions Judge, Saran at Chapra in Sessions Trial No.66 of 2001 arising out of Chapra Town P.S. Case No.206 of 1998 whereby the concerned Trial Court has convicted the sole appellant under Section 306 of the Indian Penal Code (for short 'IPC') and sentenced him to undergo rigorous imprisonment for seven years.

2. The case of the prosecution, in brief, is that on 29.04.1998, in the night, when the husband of the informant/PW-5, namely, Meera Devi was not at his house, the appellant entered into the house of the informant and committed rape upon her daughter, namely, Babita Devi and in order to



disappear the evidence, the appellant injected some poisonous material in her body, as a result of which, she died. The motive behind the occurrence is that appellant/convict, namely, Pintu Kumar Singh wanted to make illicit relationship with deceased Babita Devi and when she did not agree to his wishes, the appellant has committed the offence. Thereafter, the co-accused, namely, Dinesh Singh, who is father of the appellant/accused arrived at the house of the informant/PW-5 and threatened her to kill alongwith family members, if she would lodge any case. The FIR was registered on the basis of the complaint filed by the informant on 08.07.1998, which was referred by the CJM, Chapra to Chapra Town Police Station for institution of FIR and investigation, as per provision laid down under Section 156(3) of the Code.

3. On the basis of aforesaid written information, Chapra Town P.S. Case No.206 of 1998 dated 27.07.1998 for the offences under Sections 376 and 302 read with 34 of the IPC was registered.

4. After completion of investigation, the investigating officer has submitted charge-sheet No.390 dated 31.12.2000 under Sections 452, 376, 302, 328 and 201 read with 34 of the IPC against appellant-accused and co-accused Dinesh



Singh, who have also faced trial along with appellant/convict Pintu Kumar Singh but, the trial court has acquitted him.

5. To substantiate its case, the prosecution has examined altogether ten witnesses. They are:- Mosmat Shaibu Nisha (PW-1), Shatrughan Singh (PW-2), Ali Hasan (PW-3), Pankaj Kumar (PW-4) who is brother of the deceased, Meera Devi (PW-5), who is mother of victim and informant of this case, Dr. Sanat Kumar Singh (PW-6), who conducted postmortem examination upon deceased Babita Devi, Animesh Kumar Singh (PW-7), Mohan Ram (PW-8), Dr. Sharda Nand Singh (PW-9), who is Scientific Assistant, Forensic Science Laboratory, Patna and Manjoor Alam (PW-10), who is a typist and typed the complaint petition.

6. In support of his case, the defence has examined one witness, namely, Haresh Kumar Ojha as DW-1.

7. Apart from the oral evidence, the prosecution has also proved the following documents in order to substantiate the charges:-

Sl. No.	Exhibit Nos.	List of documents
1.	Exhibit-1	Signature of complainant on complaint petition.
2.	Exhibit-2	Postmortem report.
3.	Exhibit-3	Signature and writing of Regional Director on FSL report.



4.	Exhibit-4	Signature of Manjoor Alam on typed copy of complaint petition.
5.	Exhibit-5	A copy of the judgment passed by learned A.D.J.-6 in S.Tr. No.548 of 1993
6.	Exhibit-A	Signature of Gopal Rai on formal FIR, who has ascribed the formal FIR.
7.	Exhibit-B	Formal FIR.

8. The statement of the appellant-accused was recorded under Section 313 of the Code after stating him incriminating evidences/circumstances as surfaced during the trial, which he denied and shows his complete innocence and further stated that he was implicated falsely.

9. After conclusion of the trial, the Trial Court after acquitting co-accused Dinesh Singh from all charges, convicted the appellant-accused Pintu Kumar Singh for the offence under Section 306 of the IPC and sentenced him to undergo rigorous imprisonment for seven years. Against which, the appellant-convict has preferred this appeal, which was admitted and now the same is taken on board for final hearing.

10. Hence, the present appeal.

11. It is submitted by learned counsel appearing on behalf of appellant/accused that prior to lodging the complaint case regarding present occurrence, which is the basis of FIR in issue, an U.D. Case No.4 of 1998 was instituted on the



written report of Gopal Rai, who is father of the deceased Babita Devi and husband of the complainant/informant/PW-5. The said U.D. report was lodged on 03.05.1998 wherein it has been stated that on 28.04.1998, he along with his wife (complainant) had gone to village-Dhabauli in the district of Vaishali to attend a marriage ceremony, where her daughter remained alone in the house and when they returned on 30th April, 1998 at about 1:45 pm, they found her daughter Babita Devi dead. It is suspected on his part that out of anger, possibly the deceased had taken poison/pesticides, which is generally used for killing rat. It is further submitted that while the said U.D. case was under investigation, the complaint was lodged before learned Chief Judicial Magistrate by the mother of the deceased. It is submitted by learned counsel that the said complaint was lodged after a lapse of two and half months without having any explanation for such inordinate delay. It is submitted that the informant of the U.D. case i.e. Gopal Rai did not examine during the course of trial, where complainant/informant/PW-5 came up with a new story of rape and murder as committed by appellant/accused.

11.1. It is also submitted by learned counsel that PW-4, who is the brother of the deceased-victim and PW-5, who



is informant/complainant and mother of the deceased only supported the complaint petition rather rest of the witnesses supported the version as mentioned in the U.D. case. It is submitted that there are material contradictions in the deposition of PW-4 and PW-5, which is sufficient to suggest that the complaint was lodged with oblique motive as to implicate the appellant/accused falsely. It is also pointed out that the doctor who examined as PW-6 did not find any injury as to suggest that rape was committed upon her. Even the trial court did not believed the version of administering poison and on the basis of presumption and hypothetical ground convicted the appellant/accused under Section 306 of the IPC, which is apparently bad in eyes of law and a perverse finding.

11.2. It is further submitted that during the entire trial, nothing surfaced out of deposition of any prosecution witnesses, which may suggest that act of appellant/convict can be said such active or direct act, which forced the deceased to commit suicide, being left with no option and in support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court in the matter of **Gurucharan Singh vs. State of Punjab** as reported in **(2016) SCC Online SC 1415**. It is also submitted that there is nothing surfaced during the trial



which may establish the conduct of appellant/accused which disrobe deceased to commit suicide, is a *sine qua non* in case of abatement for suicide and in support of his submission, learned counsel for the appellant relied upon a legal report of Hon'ble Supreme Court in the matter of **Jagdish Raj Khatta vs. State of Himachal Pradesh** as reported in **(2019) 9 SCC 248**. It is further submitted by learned counsel that without a positive act on the part of the accused/appellant to instigate or aid in committing suicide, the conviction cannot be sustained. In support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court in the matter of **Gangula Mohan Reddy vs. State of Andhra Pradesh** as reported in **(2010) 1 SCC 750**.

12. Learned APP while supporting the judgment of conviction submitted that from the testimony of PW-4 and PW-5, it is clear that appellant/accused worked in nearby garage of house of the victim and teased her on several occasions and out of said frustration, the deceased committed suicide.

13. I have perused the lower court records carefully and gone through the evidences available on record as also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.



14. As to appreciate the evidences while disposing the present appeal, it is apposite to discuss the evidences available on the record, which are as under:-

15. **PW-1 is Md. Saibunisa**, who stated in her examination-in-chief that victim arrived at her home at about 3.00 pm through rickshaw. She was not appearing in her self. The rickshaw puller opened the lock of the door and after putting her inside, went away. She did not came outside and subsequently, after two days, her mother and brother came and opened the door where she found Babita Kumari dead. It is stated by her that deceased was a lady of easy virtue and therefore, the house owner was not willing to keep her as a tenant. She further deposed that appellant/accused were also residing in nearby garage next after the two house.

15.1. Upon cross-examination, she stated that she has no idea that what happened with Babita Kumari and as to how and when it was happened.

16. **PW-2 is Shatrughan Gupta**, who stated in examination-in-chief that murder of Babita Devi was committed prior to three years. It was committed in night. The deceased was living with her mother and father as a tenant in the house of one Kedar Sah. At the time of occurrence, mother and father of



deceased Babita Devi were outside and they came after two days and when opened the door, found Babita dead.

16.1. Upon cross-examination, it was stated that they were living as a tenant in the house of Kedar Sah.

17. **PW-3 is Ali Hassan** who stated in his examination-in-chief that occurrence is of 30.04.1998. It was evening when a crowd gathered in front of the house of Babita Devi and people were crying over there, he came to know that the daughter of Meera Devi (PW-5), was killed by administering poison when they were outside house. It was stated that at that time, no suspicion was raised on their part. He also said to saw the dead body of Babita (deceased).

17.1. Upon cross-examination, he stated that at the time of occurrence, father and mother of deceased Babita was not available at house. They went outside 1-2 days prior to the occurrence and Babita was alone at her house.

18. **PW-4 is Pankaj Kumar**, who is the brother of the deceased, stated in his examination-in-chief that it was night when he and his sister were sleeping in a room, the accused/appellant Pintu Singh entered into the room and climbed over her. He inserted one injection to her and after that, his sister raised alarm and by that time, her mother also came



from the roof of the house. It was said to be stated by her sister that Pintu Singh (appellant) fled away after administering her injection and, thereafter, her sister died.

18.1. Upon cross-examination, it was stated that her sister was married but she was living with them. She was unemployed. It was stated that accused/appellant, namely, Pintu came at his residence on that very day for the first time and he was equipped with syringe. He did not ask anything to his sister. He also stated that initially no alarm was raised by his sister but, she raised her alarm only after injection was given to her. It was deposed that no any persons from colony turned up. It was also stated that her mother came down from the roof but, she also not made any alarm. She also did not call anyone. They did not admit his sister to hospital. The matter was reported to police station but, no one turned up in night. They taken away the dead body but, no inquiry was made from them. The dead body was returned to him on next day. He did not disclose the occurrence to his father but mother narrated about the occurrence to him after three days. Thereafter, he again went to police station after which, the Police Inspector arrived and made inquiry, where he stated that Pintu gave her injection. He also stated that he made statement before the police that they were outside and when



returned, found dead body of her sister but, subsequently, he denied the suggestion that he was not available at the house on the date and time of occurrence. He denied the suggestion to depose falsely.

19. **PW-5 is Meera Devi**, who is mother of the deceased and informant of this case stated in her examination-in-chief that occurrence is of 29.04.1998 of about 9:00 pm and by that time, she was on the roof of her house. It was stated that the wife of house-owner was also along with her at roof. It was stated that the house is of one Kedar Sah. She further stated that she came down to room on the alarm raised by her daughter Babita, where she found her dead and son Pankaj there and saw that Pintu (appellant/accused) after removing clothes of her daughter, climbed on her body. When she hold him, appellant/accused administering her injection and fled away. Consequently, her daughter died. It was stated by her that she was informed by her daughter about injection. She further stated that she died at about 3:00 am. She identified her signature over complaint petition, which on her identification, exhibited as **Exhibit-1**. She also stated that while her daughter was going to school for learning sewing, Pintu (appellant/accused) usually teased/outraged her.



19.1. Upon cross-examination, it was stated by her that Pintu Singh never came to her house prior to the occurrence. She never saw Pintu Kumar Singh to talk with her deceased daughter. She stated that at that time Pintu Singh was running a grocery shop. It was stated by her that on the date of occurrence, her husband was not available at home and he came on the next day when she narrated entire events of occurrence to him. When it was asked by her husband that how their daughter died. She kept mum as her brain was not functioning out of fear. She also stated that people of colony did not come to know about the death of her daughter. It was also stated by her that the body was brought outside the room by police, which was called up by her husband. It was stated that Police Inspector did not ask anything that how her daughter died and she also not stated anything to him about her death. The Police Inspector did not turned after that. She received the dead body after postmortem at about 5:00 pm. She further stated that 3-4 persons of colony accompanied her while performing the last rites of her daughter. She did not say about the occurrence to the residents of colony out of fear. It is further stated that after two days of last rites/funeral of her daughter, Police Inspector came to her and on that day also, she did not state anything to him. Even, no one



turned up from colony. The Police Inspector inquired about the occurrence from the people of colony. It is stated that she becomes normal after two months and thereafter, she lodged complaint and stated entire events to Police Inspector. It is further stated that when she inquired from her husband whether he lodged any case. He replied in negative. She shows her ignorance that any case was lodged by her husband in police station. It was further stated by her that the wife of house owner who was with her at roof of the house did not come down to room along with her. She found Pintu (appellant/accused) committing rape upon her daughter having syringe in hand and when she saw her, he came down. She stated that appellant/accused also entered with a hot exchange of dialogue with her but, prior to that, her daughter was injected. She did not see appellant while injecting her daughter. She denied the defence suggestion regarding false implication.

20. **PW-6 Dr. Sanat Kumar Singh**, who has stated in his examination-in-chief that on 30.04.1998, he was posted at Sadar Hospital, Chapra on the post of CAS, Sadar Hospital, Chapra and on the same day at 5:40 pm, he has conducted the postmortem examination on the person of the deceased Babita Devi and found the following *antemortem*



findings:-

“(i) No external injury on her body.

(ii) On dissection internal organs were intact and congested.”

In his opinion, the cause of death could not be ascertained however, following viscera have been preserved for chemical analysis-

(iii) viscera – heart, piece of lungs, piece of liver, piece of kidney, piece of spleen and stomach with its content were preserved.

PW-6 has further stated that he has prepared the postmortem report with his own pen and signature and upon his identification, the same was exhibited as **Exhibit-2**. He has submitted the FSL report in the court and same is before him. He further stated that time elapsed since death was between 18 to 36 hours as per postmortem report.

21. **PW-7 is Animesh Kumar Singh**, who is the Investigating Officer of this case, stated only to send the preserved viscera of deceased Babita to Forensic Science Laboratory, Muzaffarpur and submitted charge-sheet finding case true against appellant/accused. He stated to submit viscera report in court.

21.1. Upon cross-examination, it was stated by him that he did not record the statement of any witness.

22. **PW-8 is Mohan Ram**. He is also one of the



Investigating Officer of this case and recorded the re-statement of informant/complainant, namely, Meena Devi (PW-5). He also recorded the statement of Pankaj Kumar (PW-4) and visited the place of occurrence.

22.1. On cross-examination, it was stated by him that he did not record the statement of Gopal Rai. It was stated by him that informant is the second wife of Gopal Rai, where the deceased is the daughter of his first wife, who left him. It was also stated by him that in present case after taking note of U.D. case, the position of this case becomes very doubtful.

23. **PW-9 is Dr. Sharda Nand Singh**, who appeared in court and identified the report of Forensic Science Laboratory, which on his identification, exhibited as **Exhibit-3**. It was stated by him that in the said viscera report of the victim, zinc phosphate was found, which is a poisonous substance and is a type of pesticides, which usually used to kill rat and easily available in the market.

23.1. Upon cross-examination, he stated that by taking these pesticides, death may be caused.

24. **PW-10 is Manzoor Alam**, who is ascriber of complaint petition of informant /complainant/PW-5. It has been stated the he has typed the complaint petition where he



identified his signature, upon which, same was exhibited as **Exhibit-4.**

24.1. Upon cross-examination, he stated that he has no personal knowledge about the occurrence.

25. The only defence witness, which was examined in this case is Haresh Kumar Ojha as DW-1, who identified the signature of Gopal Rai, the father of deceased on application he signed before him while writing the said application, which was exhibited as Exhibit-'B', which is signature of Gopal Rai on the formal FIR.

25.1. Upon cross-examination, he stated that Gopal Rai is available and standing inside the court room. He denied to depose falsely regarding signature of Gopal Rai on formal FIR i.e. Exhibit-'A'.

26. From the aforesaid discussions of evidence, it appears that PW-1 Mosmat Shaibu Nisha, saw the victim coming alone on rickshaw to her home, which is the place of occurrence. She saw not in her sense and for that reason, the lock of house was opened by rickshaw puller and by him only, she was taken inside the house and, thereafter, rickshaw puller went away. From this deposition, it is clear that when deceased entered into the house, no one was present there and she was



alone and senseless. PW-2 Shatrughan Singh stated that when door was opened after two days, Babita (deceased) found dead inside the room. PW-3 Ali Hasan stated in his deposition that the people of colony gathered when mother of the deceased came from outside and did not tell regarding cause of death immediately. He also saw the dead body of the deceased. From the deposition of all three witnesses, it is apparent that PW-4 and PW-5 were not available in house when occurrence took place.

26.1. The only witnesses PW-4 and PW-5, who are brother and mother of the deceased are claiming themselves to be an eye-witness of the occurrence saying that they saw the appellant/accused to insert injection to her causing her death. They also witness of committing rape by appellant/accused upon the deceased. There are material contradictions between the version of PW-4 and PW-5. PW-4 has stated that before him, the appellant/accused entered into house, climbed upon her deceased-sister and, thereafter, injected her and fled away. He stated about the presence of PW-5 at the roof of the house. She came down on the alarm of the deceased who narrated to PW-5 that appellant/accused fled away after injecting her. He stated that his mother did not raise any alarm and also did not call anyone. He also stated that his father went to police station and



lodged the report. As per his deposition, his mother told about the occurrence to his father after three days of occurrence. From the deposition of PW-5, on contrary, it appears that when she came down from the roof, she found her daughter and son inside the room and appellant/accused after disrobing her daughter climbed upon her. This material fact was not disclosed by PW-4 before whom appellant/accused entered into the house. The presence of PW-5 is also appearing doubtful, as PW-4 stated that immediately after giving injection, appellant/accused fled away and thereafter, on alarm raised by his sister, his mother (PW-5), came down to room, whereas PW-5 also stated that appellant/accused gave injection before her to her deceased daughter. She specifically deposed that she never saw her deceased daughter talking with appellant/accused. It appears highly unbelievable from her deposition that she not narrated about the occurrence to her husband when he returned home on next very day. It also appears doubtful that PW-4 stated that his father went to police station and reported about the occurrence. From the deposition of PW-5, it appears that she kept mum for long days regarding occurrence and despite of meeting with police personnel on several occasions, she did not disclose about the occurrence to police. It also appears unbelievable that she



regained her sense after two months and, thereafter, she disclosed to the police about the occurrence. She specifically stated that she saw appellant/accused while committing rape upon her daughter but, this fact was not supported by PW-4, who also claiming to be an eye-witness of the occurrence and before whom first time appellant/accused said to be entered into the house.

26.2. From the deposition of doctor (PW-6), it appears that death was caused due to poisonous substance, which is zinc phosphate generally used for killing rat. PW-6 is the Investigating Officer of this case stated specifically that the investigation of this case become doubtful after perusal of the U.D. Case.

27. From the deposition of these two eye-witnesses PW-4 and PW-5, not a single act of instigation appears against appellant/accused, which may forced the daughter of complainant/informant/PW-5 to commit suicide. The finding of abetement regarding suicide is purely appears hypothetical and perverse while recording the judgment of conviction.

28. In this context, it would be apposite to reproduce Para- 16 and 17 of the legal report of Hon'ble



Supreme Court in the matter of **Gurucharan Singh (supra)** as under:-

“16. The necessary ingredients for the offence under Section 306 IPC were considered in *S.S. Chheena v. Vijay Kumar Mahajan* [*S.S. Chheena v. Vijay Kumar Mahajan*, (2010) 12 SCC 190 : (2011) 2 SCC (Cri) 465] where explaining the concept of abetment, Dalveer Bhandari, J. wrote as under : (SCC p. 197, para 25)

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

17. While dealing with a case of abetment of suicide in *Amalendu Pal v. State of W.B.* [*Amalendu Pal v. State of W.B.*, (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896] , Dr M.K. Sharma, J. writing for the Division Bench explained the parameters of Section 306 IPC in the following terms : (SCC p. 712, paras 12-13)

“12. Thus, this Court has consistently



taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

29. It would also be apposite to reproduce para-13 of the legal report of Hon’ble Supreme Court in the matter of



Gangula Mohan Reddy (supra) as under:-

13. In *State of W.B. v. Orilal Jaiswal* [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty”.

30. Thus, from the above factual discussions on re-appreciation of evidences in the background of legal proposition, it appears that the prosecution has miserably failed to establish its case during the trial as to convict the appellant/accused under Section 306 of the IPC.

31. Accordingly, appeal is allowed. The impugned judgment of conviction and order of sentence dated 05.10.2002 passed by learned 7th Additional Sessions Judge, Saran at



Chapra in Sessions Trial No.66 of 2001 arising out of Chapra Town P.S. Case No.206 of 1998 are, hereby, set aside. The appellant, Pintu Kumar Singh is acquitted from the aforesaid charges levelled against him.

32. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs. 5,000/- (Rupees Five Thousand Only) to Mr. Ravi Bhardwaj, learned *Amicus Curiae* in Criminal Appeal (SJ) No. 631 of 2002 as consolidated fee for rendering his valuable professional service for the disposal of present appeal.

33. Office is directed to send back the lower court records along with a copy of the judgment to the court below.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.01.2024
Transmission Date	31.01.2024

