

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.26 of 1996

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Suraj Prasad @ Suraj Singh Son of Ram Chandra Singh, Resident of Village
Korut Police Station Chandi, District Nalanda.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Surya Nilambari, Amicus Curiae.
For the Respondent/s : Mr. Abhimanyu Sharma, APP.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 02-04-2024

Heard Ms. Surya Nilambari, learned Amicus Curiae for
the appellant/informant and Mr. Abhimanyu Sharma, learned
A.P.P. for the State.

2. The present appeal has been filed by the
appellant/informant under Section 374(2) of the Code of
Criminal Procedure, 1973 against the judgment of conviction
dated 16.11.1995 and order of sentence dated 18.11.1995 passed
by learned Vth Additional Sessions Judge, Nalanda at Bihar
Sharif in Sessions Trial No.569 of 1992 (arising out of Chandi
P.S. Case No.253 of 1992) whereby and whereunder the
appellant namely Suraj Prasad @ Suraj Singh has been
convicted under Section 302 of the Indian Penal Code and he



has been sentenced to undergo life imprisonment.

3. The prosecution case, in brief, is that fardbeyan of accused/appellant himself in injured condition recorded at Ahra Khanda at Chandi Korut Road on 01.07.1992 at 00:30 hours i.e. 12:30 A.M. is that on 30.06.1992 while he was coming from his Sasural at Sheikhpura to his house with his wife Sumatwa Devi (deceased) at about 09:30 P.M., when he reached near Ahra Khanda by the side of Chandi Korut Road all of a sudden someone caught him behind, four other persons surrounded him. He and his wife in the light of torch identified Ram Keshwar Singh armed with gun, Sheo Kumar Thakur armed with rifle and Bhushan Koeri armed with pistol. They could not identified the other two persons who were armed with lathi and pistol. Ram Keshwar singh disclosed that he was in search of his father, a great Khalifa, who gets his Samadhi involved in a case. He started taking away him towards a ditch which was objected by his wife and disclosed that she had identified them. Sheo Kumar Thakur said that since she had identified them it will be better to kill them. Anyhow, he escaped from there and during that he heard the screaming sound of his wife then he ran away towards village raising *hulla*, upon which his villagers came there and found his wife having been killed and her silver Payal and chain



were missing from her body. The accused had taken away Rs.300/- from his pocket.

4. In fardbeyan, it has been stated that the motive for occurrence was that Kallu Ram, Samadhi of Ram Keshwar Singh, had acquired land from Ratan Devi, Mausi of Suraj Prasad by playing fraud for which a case has been lodged in which father of Suraj Prasad was the pairvikar. Sheo Kumar Thakur and Bhushan Koeri were the men of the group of Ram Keshwar Singh who had threatened to brother of Suraj Prasad namely Devendra of dire consequences sometime prior to occurrence.

5. In order to substantiate the charge, the prosecution adduced the following oral evidences:

PW-1 Kameshwar Ram (father-in-law of accused)

PW-2 Ram Bilash Mahto (co-villager of PW-1)

PW-3 Ram Deo Prasad (co-villager of PW-1)

PW-4 Lakhan Ram (uncle of deceased)

PW-5 Kapil Deo Pandey (formal witness)

PW-6 Sonu Devi (mother of deceased)

PW-7 Dr. M.M. Rahman (Medical Officer who

conducted postmortem on the body of deceased)

PW-8 Rajendra Prasad (co-villager of PW-1)



PW-9 Ranjan Kumar (tendered)

PW-10 Kishori Prasad (formal witness)

PW-11 Arjun Prasad (co-villager of PW-1)

PW-12 Sheo Nandan Paswan (co-villager of PW-1)

PW-13 Yogendra Kumar (co-villager of PW-1)

PW-14 Om Prakash Shao (witness of inquest report)

PW-15 Mathura Paswan (witness of inquest report)

PW-16 Prabhunath Singh (I.O. of the case)

6. The prosecution has also adduced the following documentary evidences:

(i) Ext 1- Formal F.I.R.

(ii) Ext 2- Post-mortem Report

(iii) Ext 3- Fardbeyan

(iv) Ext 4- Signature over the carbon copy of inquest report.

(v) Ext 4/1- Signature over the inquest report.

(v) Ext 5- Inquest report.

7. After completion of the oral as well as documentary evidence on behalf of prosecution, the statement of accused under Section 313 of the Cr.P.C. were recorded.

8. The defence of the accused/appellant is total denial of prosecution story as found by the Investigating Officer during



the investigation. In defence, the accused stated under Section 313 of Cr.P.C. that he was bringing back the deceased on the date of occurrence and had not threatened her. Ram Keshwar Singh, Sheo, Shiv Kumar Thakur and Bhushan Koeri had killed the deceased.

9. The defence has examined two witnesses, DW-1 is Hari Narain Paswan and DW-2 is Sanjay Kumar.

10. At the conclusion of trial, the Trial Court convicted the appellant and sentenced him as aforesaid. Being aggrieved by the said judgment of conviction and order of sentence, the appellant filed the instant appeal.

11. The learned Trial Court in the impugned judgment held that the prosecution has been able to prove that the relationship between the deceased and the accused was not cordial rather it was quite strained; she was regularly ill treated by the accused who intended to get rid of her in one way or the other, it was he who was seen in the company of deceased during the last moment of her life and the deceased was last seen alive with him. All these circumstances clearly indicate that the prosecution has been able to prove that it was the accused who has committed murder of his wife (deceased).

12. Learned Amicus Curiae has submitted that the



petitioner is innocent and has been wrongly convicted in this case on the basis of the circumstantial evidence which are too weak to form the complete chain of circumstances pointing towards the guilt of the appellant. The oral evidence adduced on behalf of prosecution could only be a surmise and suspicion and as such the same cannot form a concrete evidence which is a pre-condition for conviction of an accused. The prosecution witnesses specially PW-1 that he received the information regarding death of his daughter through one Kallu Ram who has admittedly not been examined by the prosecution in order to substantiate the plea of knowledge of death of deceased, the Trial Court ignored to refer the defence witnesses. There is no chit of paper before Police or Court of accusation of torturing his wife and demand of dowry.

13. On the other hand, learned Additional Public Prosecutor for the State has submitted that the prosecution has been able to prove its case, the witnesses have fully supported the prosecution case. It is further submitted that there being no merit in this appeal filed by the appellant and the impugned judgment of conviction and order of sentence are in accordance with law, therefore, the instant appeal is liable to be dismissed.

14. We have carefully perused the record and



proceedings and considered the submissions advance by learned counsel for the parties.

15. The Appellate Court is empowered to re-appreciate the entire evidence on record for the purpose of ascertaining as to whether accused person has committed any offence or not and if the impugned judgment and order is ultimately found to be clearly unreasonable and perverse, then such judgment and order can be set aside by the Appellate Court.

16. Before we proceed to notice the rival submissions in order to have a clear understanding of the context in which the submissions on behalf of the parties have been made, it would be apposite to notice the testimony of the prosecution witnesses.

17. PW-1, Kameshwar Ram is the father of the deceased who has deposed that he had married his daughter Sumatwa Devi with the accused about 5 years prior to the date of occurrence and given dowry according to his capacity but Rs.5,000/- remained due to be paid in future which he could not pay and for that amount the deceased was being regularly ill treated and due to that reason she had left her husband house and was residing with PW-1 at his house since one year. He further stated that Kallu Ram stated that accused with the help of others has killed the deceased. PW-1 admitted that he had not



seen the occurrence through his own eyes.

17.1. PW-1 at para 8 in cross-examination admitted that after marriage and before the occurrence there was good relationship with accused and father of accused and the deceased had never made any complaint of her husband (accused) or father-in-law to him. In para 6 he has stated that he got information about the occurrence in village after 20 days. When he came from Patna to his village, his wife told him about the occurrence.

18. PW-2 Ram Bilash Mahto, the co-villager of PW-1, had also deposed that accused/appellant and his father Ram Chandra Prasad used to ill treat the deceased due to which she fled away from her Sasural and was residing at her father's house in village Sheikhpura. The accused/appellant wanted to take back the deceased and for that purpose he started quarreling during which he had beaten the deceased on the date of occurrence. The mother of the deceased, seeing all the ugly seen sent her with the accused and while taking back to Korut the accused killed her.

18.1. PW-2 in his cross-examination at para 4 stated that he came to know from villagers that the deceased is not happy in her matrimonial home. The family member of Kameshwar



Ram (PW-1) had not told him about the assault. In para 16 he has admitted that the deceased had never tell him about the assault on her.

19. PW-3 Ram Deo Prasad is the co-villager of PW-1 who had deposed that he had gone to purchase medicine at Bihar Sharif on 30.06.1992 at 12.30 P.M. He had seen deceased sitting at the gate of Ajanta Cinema Hall and on inquiry she told that her husband had gone to see the picture in Cinema Hall. He went away from there after purchasing the medicine and returned his village in evening. On the next day in the morning, mother of the deceased was weeping who told that the husband of deceased killed her.

20. PW-4 Lakhan Ram is the uncle of deceased who had deposed in similar way as deposed by PW-1 with respect to ill treatment with deceased by accused and his father, residing of deceased at her parental house since several months and on the date of occurrence taking away the deceased by accused professing that he is taking her to his villager Korut.

20.1. PW-4 in para 2 has stated that the accused was residing in his in-laws house since 5 months earlier to the date of occurrence and in para 3 he has deposed that on the second day of occurrence Kallu Ram had informed him about the



killing of deceased. In para 4 he had stated that he had suspicion that accused had killed the deceased. In para 8 he has admitted that he or Kameshwar Ram (PW-1) had not made any complaint to anyone with respect to torture to deceased.

21. PW-6 Sonu Devi is the mother of deceased who also deposed in similar way as deposed by PW-1 and PW-4 and further stated that PW-3 had seen the deceased having been left by the accused before the gate of Cinema Hall at Biharsharif. PW-6 admitted that accused and deceased were living in her house since about one year. In para 7 she has admitted that statement of Kallu Ram had not been taken by the Police. She had seen the dead body of the deceased in Biharsharif and after post-mortem the dead body was handed over to accused who had performed her last rites and Shraddh. In para 8 she admitted that on getting information about the death of the deceased she or her husband or other person had not gone to Korut. They have not made any inquiry about how the deceased died and who had killed her. In para 10 she has admitted that Kallu Ram had not told about name of any accused and he only stated that her daughter was killed by the thief and after stating the same Kallu Ram returned back.

22. PW-7 Dr. M.M. Rahman is the Medical Officer who



had conducted the post-mortem examination on the dead body of Sumatwa Devi (deceased) on 01.07.1992 at 04.50 P.M. and proved the post-mortem report (Ext-2). On post-mortem of dead body of deceased, he found the following:

Rigor mortis present in both the upper and lower limbs.

(i) Three abrasions on upper part of right side of neck anterior to sternocleido mastoid muscles of sizes 1" x 1/2", 3/4" x 1/4" and 1/2" x 1/2".

(ii) Two abrasions on upper part of left side of neck anterior to sternocleido mastoid muscles of sizes 3/4" x 1/2" and 1/2" x 1/2".

3. On dissection of above noted injuries blood clot was found underneath the tissues. The neck muscles in this region found lacerated, cricoid cartilage and cornu of hyoid bone found fractured, asbestosis found congested on opening the cranial cavity brain and it meninges found congested.

4. On opening the chest- both the lungs congested. Both chambers of heart were full of blood and blood clot. On dissection of abdomen-stomach contained about 103 of semi-digested material. All abdominal viscerals found intact and congested. Small intestine contained gas and fluid. The large intestine contained gas and faeces. The uterus found not graer. The genetalia intact urinary bladder empty.

22.1. In his opinion, death has occurred due to asphyxia as a result of above noted injuries caused by throttling and time elapsed since death was within 24 hours.

23. PW-8 Rajendra Prasad who is cousin brother of



deceased had deposed that on getting information from Kallu Ram about murder of the deceased he had gone to Chandi P.S. to inquire about whereabouts of the deceased where he came to know that the dead body of the deceased has been taken to Biharsharif. He came to Sadar Hospital, Biharsharif, when he had seen the dead body of the deceased. He also deposed that the accused was regularly ill treating the deceased and had taken her on the date of occurrence from the Sheikhpura and was going to Korut and in the way deceased was murdered by him.

24. PW-11 Arjun Prasad deposed that accused always indulged in ill treating the deceased and on the date of occurrence while taking her from Sheikhpura to Korut in the way he killed her.

25. PW-12 Sheo Nandan Paswan deposed that the deceased was not properly treated by the accused and on several occasion the accused had beaten the deceased for which he had pacified the accused. On the date of occurrence the accused was taking back the deceased and in the way he killed her.

26. PW-13 Yogendra Kumar has also deposed that the relationship between the accused and deceased was never cordial and on the date of occurrence the accused had threatened the deceased that he will teach her a lesson and on the same day



in the way to Korut the deceased was killed.

27. PW-14 and PW-15 are the witnesses of the inquest report and they have proved their signature Ext-4 and Ext-4/1 over the inquest report.

28. PW-16 is Investigating Officer of this case who has deposed that fardbeyan of Suraj Singh was recorded by SHO Vijay Kumar on which the formal FIR was registered. He had prepared inquest report (Ext-5). He had visited to the place of occurrence which is situated at Chandi Khanda on Chandi Korut Road, 500 yard east of Jogiya Village which is a deserted place. He had re-examined informant and examined his father and other villagers of Village Korut and on 01.07.1992 at 04.00 P.M. mother of deceased (PW-6), Chandrakali Devi (Aunt), Lakhan Ram (Uncle), Rajendra Prasad (Cousin Brother), Yogendra Prasad, Ram Bilas Prasad of village Sheikhpura came on Police Station whose statements were recorded. The statement of informant and his father was not found true and the statement of the witnesses of Sheikhpura village was found true and the statement of Yogendra Kahar, Ranjan Kumar, Kameshwar Ram, Ram Deo Prasad, Arjun Prasad and Chaukidar Shiv Nandan Prasad were recorded who have stated that accused Suraj Prasad was used to torture the deceased and while taking back the



deceased, he had threaten deceased. The charge sheet was filed against the accused/ appellant. In his cross-examination he has admitted that he had not interrogated from any person of Korut about the behaviour of accused with the deceased. He also admitted that earlier no complaint had been filed that accused Suraj Singh had used to torture the deceased.

29. In the present case, admittedly there is no eye witness to the occurrence and the case is based on circumstantial evidence. The prosecution case is based on the circumstances that the deceased was last seen with the accused and the onus is on the accused to explain the circumstances in view of Section 106 of The Evidence Act.

30. The principle with respect to circumstance of last seen and shift of onus on the accused has been settled in catena of judgment of Hon'ble Supreme Court. In case of **Kanhaiya Lal vs. State of Rajasthan, (2014) 4 SCC 715** it was noted that the circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt



against the appellant.

31. In **Nizam vs. State of Rajasthan (2016) 1 SCC 550** it was observed that “only if the prosecution has succeeded in proving the facts by definite evidence that the deceased was last seen alive in the company of accused, a reasonable inference would be drawn against the accused and then only onus can be shifted on the accused under Section 106 of the Evidence Act.”

32. The last seen theory can be invoked only when the same stands proved beyond reasonable doubt. A 3-Judge Bench in **Chotkau vs. State of Uttar Pradesh, (2023) 6 SCC 742** opined as under:

“15. It is needless to point out that for the prosecution to successfully invoke Section 106 of Evidence Act, they must first establish that there was “any fact especially within the knowledge of appellant”’

33. The Hon’ble Supreme Court in **R. Sreenivasa vs. State of Karnataka (2023) SCC OnLine SC 1132** reiterated the said principle by observing that the burden on the accused would kick in only when the last seen theory is established. It is also important to quote the observation made in paragraph 17 of the judgment which is as under:

“17. In the present case, given that there is no definitive evidence of last seen as also the fact that there is a long time-gap between the alleged last seen and the recovery of the body, and in the



absence of other corroborative pieces of evidence, it cannot be said that the chain of circumstances is so complete that the only inference that could be drawn is the guilt of the appellant. In Laxman Prasad v. State of Madhya Pradesh, (2023) 6 SCC 399, we had, upon considering Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 and Shailendra Rajdev Pasvan v. State of Gujarat, (2020) 14 SCC 750, held that “.....In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. It would be unsafe to sustain the conviction of the accused on such evidence, where the chain is clearly incomplete. That apart, the presumption of innocence is in favour of the accused and when doubts emanate, the benefit accrues to the accused, and not the prosecution. Reference can be made to Suresh Thimppa Shetty vs. State of Maharashtra, 2023 INSC 749 (2023 SCC OnLine SC 1038).”

34. If the accused offer no reasonable explanation or furnishes a wrong explanation in discharge of the burden placed on him, the Court can consider his failure to adduce an explanation as an additional link in chain of circumstances.

35. Now, on the basis of material on record it is required to be examined whether the prosecution has firmly established various circumstance which linked together forges a chain so complete that it leads to sole hypothesis of guilt of the accused beyond all reasonable doubt. The basic links in the chain of circumstances start with motive, then move on the last seen theory, recovery, medical evidence, expert opinions if any and



any other additional link which may be part of the chain of circumstances.

36. The Hon'ble Supreme Court in **Inderjit Das vs. State of Tripura** reported in **2023 SCC OnLine SC 201** held is as under:

“15. In a case of circumstantial evidence, motive has an important role to play. Motive may also have a role to play even in a case of direct evidence but carries much greater importance in a case of circumstantial evidence than a case of direct evidence. It is an important link in the chain of circumstances. Reference may be made to the following two judgments on the importance of motive in a case of circumstantial evidence:

(1) Kuna alias Sanjaya Behera vs. State of Odisha, (2018) 1 SCC 296

and

(2) Ranganayaki vs. State by Inspector of Police, (2004) 12 SCC 521

37. The Hon'ble Supreme Court in paragraph 88 of the Judgment in **Ramanad @ Nandilal Bharti vs. State of Uttar Pradesh** (*supra*) observed as under:

“It is a settled principle of criminal jurisprudence that in a case based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. This Court in various decisions has laid down the principles holding that motive for commission of offence no doubt assumes greater importance in



cases resting on circumstantial evidence than those in which direct evidence regarding commission of offence is available. It is equally true that failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. However, it is also well settled and it is trite in law that absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused.”

38. It is clear from the prosecution evidence that the relation of appellant with his wife (deceased) was not so inimical that the appellant had strong motive for killing the deceased.

39. PW-1, who is father of deceased has admitted that there was good relationship with the accused and the deceased had never made any complaint of her husband. PW-2 has also admitted that PW-1 had never told him about the torture by accused. PW-6, who is mother of the deceased has stated that deceased and accused were living together in her house since one year. PW-4 has also admitted that PW-1 had never complaint to anyone with respect to torture by the accused to the deceased. It is clear from the deposition of the prosecution witnesses that deceased and accused being wife and husband were residing together in her maternal house since about one



year and there was no complaint of any torture by accused then it cannot be said that there was any strong motive of accused to kill his wife. After alleging motive, prosecution has failed to establish the same. This failure to establish the alleged motive is a case based on circumstantial evidence can only be held that the said failure had weakened the case of the prosecution.

40. It is pertinent to mention here that the witnesses PW-6 (mother of deceased), PW-4 (uncle of deceased), PW-1 (father of deceased) in their deposition deposed that Kalu Ram had informed about the killing of deceased, but admittedly he was not examined by the prosecution without any reason despite the fact that he was a material witness which creates doubt in the prosecution case.

41. It appears from the impugned judgment that the accused had performed last rites as well as Sharadh ceremony but the father of the deceased was not invited in the Sharadh ceremony of the deceased and the Trial Court held that this is also strong circumstances against the accused. PW-1 (father of deceased) had admitted that he got information from his wife about the occurrence after 20 days when he came to village from Patna. PW-6 (mother of deceased) had seen the dead body of deceased in Bihar Sharif and after post-mortem the body of



deceased was handed over to accused who performed the last rites and Sharadh ceremony. In view of the said fact and circumstances, the finding of learned Trial Court is not tenable.

42. Considering the entire materials from the records and proceedings, it is not possible to conclude that the appellant/convicted accused before this Court had committed the subject crime and none else. The logical inference through the material on record does not probablize the contingency that except the accused none else had committed the crime in question.

43. In the light of this discussion, the appellant/convicted accused is certainly entitled for benefit of doubt as the prosecution has failed to establish their guilt by adducing clear, cogent, trustworthy and clinching evidence. In the result, the appeal deserve to be allowed and is allowed with the following orders:

I. The appeal is allowed.

II. The impugned judgment of conviction dated 16.11.1995 and order of sentence dated 18.11.1995 passed by learned Vth Additional Sessions Judge, Nalanda at Bihar Sharif in Sessions Trial No.569 of 1992 (arising out of Chandi P.S. Case No.253 of 1992) thereby convicting the



appellant/convicted accused and sentencing him, accordingly is set aside.

III. The appellant is acquitted of the charges leveled against him and held to be proved against him by the learned Trial Court.

44. The aforesaid appeal, accordingly, stand disposed of.

45. Before parting with the appeal, We record our appreciation for the able assistance rendered by Ms. Surya Nilambari, learned Amicus Curiae.

46. The Patna High Court, Legal Services Committee is, hereby, directed to Pay Rs.7,500/- (Rupees Seven Thousand Five Hundred) to Ms. Surya Nilambari, learned Amicus Curiae in Criminal Appeal (DB) No.26 of 1996 as consolidated fee for the services rendered by her.

(Sunil Dutta Mishra, J)

I Agree
(Arvind Srivastava, J)

(Arvind Srivastava, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	14.12.2023
Uploading Date	02.04.2024
Transmission Date	02.04.2024

