

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.788 of 2018

Arising Out of PS. Case No.-111 Year-2015 Thana- VAISHALI District- Vaishali

Md. Alauddin S/o Md. Jabbar, R/o Vill.- Chak Allahdad, P.S.- Vaishali,
District- Vaishali.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Ajay Kumar Thakur, Advocate Mr. Arvind Kumar Sinha, Advocate
For the State	:	Mr. Ajay Mishra, Addl.PP
For the Informant	:	Mr. Raja Ram Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 23-09-2024

Heard Mr. Ajay Kumar Thakur, learned counsel assisted by Mr. Arvind Kumar Sinha, learned counsel for the appellant, Mr. Ajay Mishra, learned Additional Public Prosecutor for the State and Mr. Raja Ram Rai, learned counsel for the informant.

2. This appeal has been preferred for setting aside the judgment of conviction dated 10.05.2018 (hereinafter referred to as the ‘impugned judgment’) and the order of sentence dated 17.05.2018 (hereinafter referred to as the ‘impugned order’) passed by learned Additional Sessions Judge-I, Vaishali at Hajipur (hereinafter referred to as the ‘learned trial court’) in Sessions Trial No. 446 of 2015 arising out of Vaishali P.S. Case No. 111 of 2015

registered for the offences punishable under Sections 302/34/120B of the Indian Penal Code (in short 'IPC'). By the impugned judgment, the appellant has been convicted for the offence punishable under Section 302/34 IPC and has been ordered to undergo life imprisonment with a fine of Rs.50,000/-.

Prosecution Case

3. As per the prosecution story, the informant, namely, Gajendra Thakur (PW-8) alleged in his written report that on 19.04.2015 after having dinner, he along with his family members went to a sleep. The informant and his wife were sleeping in the *verandah* of the house and his son was sleeping in the '*kothari*'. On 20.04.2015 at about 01:45 AM (in the night), the informant heard some restlessness sound coming from the '*kothari*' then he and his wife went there and saw that from the '*kothari*', Md. Alauddin (this appellant) and Md. Yunus having '*chapar*' in their hand were fleeing. When the informant and his wife went in the '*kothari*', they saw that their son, namely, Subodh Kumar (deceased) was soaked in blood and there was a cut mark on the right side of his neck and he had died on the bed. On hearing their hue and cry, their neighbours came there. The reason for the alleged occurrence is that Soni Khatoon (sister of the appellant) used to talk to Subodh Kumar, the son of the informant, on phone

which the informant and his wife had objected to and talked to her parents and brother regarding this. Despite this, said Soni Khatoon used to talk to the deceased. The informant alleges that this appellant along with Md. Yunus and Soni Khatoon have killed his son Subodh Kumar under a conspiracy by cutting his neck with '*chapar*'. The informant alleges that the occurrence has been witnessed by the co-villagers, namely, (1) Suresh Thakur, (2) Ashok Thakur, (3) Gopal Pandit, (4) Krishnanandan Kumar and others.

4. On the basis of the aforesaid written report, formal FIR was registered being Vaishali P.S. Case No. 111 of 2015 dated 20.04.2015 for the offences punishable under Sections 302/34/120B IPC against three accused persons, namely, (1) Md. Alauddin, (2) Md. Yunus and (3) Soni Khatoon. After investigation, police submitted chargesheet vide chargesheet no. 128 of 2015 dated 16.07.2015 under Sections 302/34/120B IPC against said three accused persons. Learned Magistrate while taking cognizance on 26.10.2015 of the offence under Sections 302/34/120B IPC against the accused persons (1) Md. Alauddin, (2) Md. Yunus and (3) Soni Khatoon found that the records of the accused Soni Khatoon and Md. Yunus have already been sent to the Juvenile Justice Board vide order dated 21.04.2015 and

06.05.2015 respectively and directed the office to send the photostat copy of cognizance order and chargesheet to the Juvenile Justice Board. Learned Magistrate committed the records of accused Md. Alauddin (appellant) to the court of sessions on 30.11.2015.

5. After commitment of the case records, Sessions Trial No. 446 of 2015 was registered in which charges were framed on 05.01.2016 under Sections 302/34 and 120B IPC against this appellant and were explained to him. In course of trial, altogether 12 prosecution witnesses were examined and several documents were exhibited on behalf of the prosecution. The defence also brought two witnesses. The list of prosecution witnesses, defence witnesses and exhibits on behalf of prosecution and defence witnesses are being mentioned hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Yogendra Thakur
PW-2	Rajendra Thakur
PW-3	Krishnandan Kumar
PW-4	Sunil Kumar
PW-5	Suresh Thakur
PW-6	Manoj Kumar
PW-7	Sushila Devi
PW-8	Gajendra Thakur
PW-9	Ashok Thakur
PW-10	Dr. Pranay Kunj

PW-11	Md. Rafique
PW-12	Ritesh Kumar Mandal

List of Defence Witnesses

DW-1	Wasiran Khatoon
DW-2	Md. Jabbar

List of Exhibits

Exhibit ‘1’	Signature of Suresh Thakur on inquest report
Exhibit ‘1/1’	Signature of Ashok Thakur on inquest report
Exhibit ‘1/2’	Registration of case of Fardbeyan
Exhibit ‘2’	Signature of Suresh Thakur on Fardbeyan
Exhibit ‘2/1’	Signature of Gajendra Thakur on fardbeyan
Exhibit ‘3’	Post-mortem Report
Exhibit ‘4’	Signature of SHO on FIR
Exhibit ‘5’	Whole Inquest Report

List of Exhibits on behalf of Defence

Exhibit ‘A’	C.C. of formal FIR of Vaishali P.S. Case No. 190 of 2015
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Findings of the learned Trial Court

6. Learned trial court on analysing the evidences of all the prosecution witnesses found that almost all the witnesses i.e. the informant (PW-8), his wife Sushila Devi (PW-7), Rajendra Thakur (PW-2) and Yogendra Thakur (PW-1) have fully supported the prosecution case that when they woke up at the time of occurrence on hearing groaning sound of the deceased, just after

the attack on his neck went there and saw that this appellant and Md Yunus were fleeing away having *chapar* in their hand. Learned trial court found that the accused persons were seen having blood stained *chapar* in their hands coming out from the room of the deceased and just thereafter the victim was found lying on the cot having cut in his right neck bleeding profusely. Learned trial court came at a conclusion that version of all the prosecution witnesses clearly and abundantly revealed that the accused was noticed coming out of the place of occurrence with the *chapar* by which he murdered the victim.

7. Learned trial court has found that all the prosecution witnesses are consistent on the point that the deceased and the sister of the appellant were talking to each other through mobile phone. Thus, the motive of murder has been fully corroborated by the evidence put forth by the prosecution and their veracity cannot be doubted.

8. Learned trial court further analysed the evidence of the Doctor (PW-10) who conducted the post-mortem of the deceased and submitted the post-mortem report (Exhibit '3') which shows deep incised wound on right upper neck and cause of death is bleeding and shock from this injury and the substance used is hard and sharp edge weapon. Thus, the medical evidence

conclusively established the death of the deceased as a result of the impact of injuries inflicted upon him by the accused with the *Chapar*.

9. Learned trial court found that there has been consistent evidence put forth by the prosecution to bring home the guilt of the accused and it has been established by the oral as well as documentary and medical evidence and there is strong and conclusive circumstantial evidence. Accordingly, learned trial court found that the offence punishable under Section 302/34 IPC has been proved against the accused beyond all reasonable doubts. In result, learned trial court convicted the appellant for the offence under Section 302/34 IPC and sentenced him to undergo life imprisonment with a fine of Rs.50,000/-.

Submissions on behalf of the Appellant

10. Mr. Ajay Kumar Thakur, learned counsel assisted by Mr. Arvind Kumar Sinha, learned counsel for the appellant submits that it would appear from perusal of the evidences on the record that there is no eyewitness to the occurrence. The witnesses have stated about the presence of more than two persons and they claimed to have seen them fleeing away from the place of occurrence. Referring to the evidence of the informant (PW-8), learned counsel points out to paragraph '13' of his deposition

wherein he has stated that after hearing his shouts and cries, the witnesses namely Rajender Thakur, Yogendra Thakur, Suresh Thakur, Krishnanandan Kumar, Gopal Pandit, Ashok Thakur and several other persons had come. It is submitted that Yogendra Thakur (PW-1), Rajender Thakur (PW-2), Suresh Thakur (PW-5), Krishannandan Kumar (PW-3), Gopal Pandit (not examined) and Ashok Thakur (PW-9) arrived at the place of occurrence only after hearing the cries of the informant, therefore they had no occasion to either see the actual occurrence or to see the accused persons fleeing away from the place of occurrence.

11. Learned counsel further submits that mother and father of the deceased have been examined in this case as PW-7 and PW-8 respectively. They have stated in their deposition that Subodh (since deceased) was sleeping in the room. They were sleeping at the *verandah* and the room in which Subodh was sleeping was north to them. They had heard the sound of restlessness from the room of Subodh and reached there when they saw that Alauddin and Yunus were fleeing away from the room and both were having *chapar* (a kind of weapon used for cutting *khassi* and she-goats). Learned counsel submits that according to these witnesses, the place of occurrence is the room in which Subodh was sleeping but the I.O. (PW-12) has prepared the inquest

report at the door of the deceased. Referring to the inquest report (Exhibit '5'), learned counsel submits that it mentions the place where inquest report was made as village-Chakahlad, deceased's door. It is submitted that the I.O. (PW-12) had inspected the place of occurrence. He has given the description of the place in paragraph '4' of his examination-in-chief and in his cross-examination he has stated that at the place of occurrence he did not find any blood. The submission is that from the evidence of the I.O. (PW-12), the place of occurrence as disclosed by PW-7 and PW-8 are not duly proved and there seems to be a doubt as regards the actual place of occurrence.

12. Learned counsel further submits that the medical evidence in form of postmortem report (Exhibit '3') of the deceased would show that the Doctor had found one external injury of deep incised wound on right upper neck of the deceased, nobody had seen the actual occurrence but the prosecution witnesses have stated that they had seen the *chapar* in the hand of both the accused namely Alauddin and Yunus and the *chapars* were having blood stains. It is submitted that if two accused had assaulted the deceased by the *chapars* which they were carrying in their hand, the injuries would have been more than one.

13. Learned counsel submits that from the evidences on the record it is apparent that there was a previous enmity as the prosecution witnesses have stated that the deceased was regularly talking with Soni Khatoon, the sister of the appellant and in this connection only 4-5 days prior to the alleged occurrence, the mother of the deceased (PW-7) had gone at the door of the accused and had warned him. The defence has suggested that Subodh was killed by some unknown criminal but the appellant has been falsely implicated due to village politics.

14. Learned counsel for the appellant submits that in this case the occurrence is said to have taken place at 1:45 am (during night hours) and PW-7 has stated that she had informed the police about the occurrence but the written application was submitted by PW-8 in the morning, therefore, there is a delay of 4-5 hours in submission of the written application by PW-8. It has been further submitted that the first version of the prosecution story, as disclosed by PW-7 over telephone, has been suppressed.

15. It is lastly submitted that at the stage of Section 313 of the Code of Criminal Procedure (in short 'CrPC'), the learned trial court has not placed the entire incriminating circumstances before the appellant, as a result whereof the appellant was unable

to explain the circumstances which were going against him. This, according to learned counsel for the appellant, has caused serious prejudice to the appellant and on this ground alone, the whole trial would stand vitiated. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Raj Kumar @ Suman versus State (NCT of Delhi)** reported in **AIR 2023 SC 3113**, **Naresh Kumar versus State of Delhi** reported in **AIR 2024 SC 3233** and **Sujit Biswas versus State of Assam** reported in **(2013) 12 SCC 406**.

16. It is submitted that the accused persons had no annoyance with the talk between the deceased and Soni Khatoon and in fact it will appear from the deposition of PW-7 that she had gone at the door of the appellant to warn/reprimand the family of Soni Khatoon. There being no annoyance on the part of the accused, it cannot be inferred that the appellant would indulge in commission of the crime because of any enmity. According to him, the prosecution in this case has not been able to prove the motive behind the occurrence beyond all reasonable doubts. On these grounds, it is submitted that the learned trial court could not properly appreciate the evidences on the record and has fell in error in recording a finding that the accused was seen coming out of the place of occurrence with a 'chapar' in his hand. It is

submitted that the learned trial court has taken the prosecution witnesses as convincing, trustworthy and dependable but on a close scrutiny of their evidences, it would appear that they are highly inconsistent, materially differ with each other and some of them namely Ashok Thakur, Suresh Thakur and Krishnanandan Kumar have been contradicted by PW-11 on certain aspects of the matter. The defence has also suggested that this case has been lodged by the prosecution only to save their skin from the accusation which they were facing in the case lodged for setting the house of the appellant at fire in the night of the occurrence. On these grounds, prayer has been made to set aside the judgment of the learned trial court and acquit the appellant of the charges.

Submissions on behalf of State and the Informant

17. On the other hand, Mr. Ajay Mishra, learned Additional P.P. for the State submits that the prosecution case is based on circumstantial evidences. It is submitted that in a case based on circumstantial evidence, the motive of the occurrence is required to be proved with cogent and reliable piece of evidences. Learned Additional P.P. submits that in this case, all the prosecution witnesses are consistent on the point that the deceased and sister of the appellant were talking to each other through mobile phone. PW-7 who is the mother of the deceased has stated

that Subodh and Soni Khatoon both were studying in the same school and they were going for tuition at one place. She has stated that Subodh was telling Soni not to talk with him. PW-8 who is father of the deceased has stated in paragraph '14' of his deposition that Subodh was talking with Soni Khatoon for last six months prior to the occurrence. Darogaji had taken away the mobile phone of Subodh. He has also stated that about 7-8 days prior to the occurrence, his wife had gone to the house of the appellant to reprimand them. The defence has not questioned the prosecution witnesses particularly PW-7 and PW-8 as regards the relationship between the sister of the appellant and the deceased. In fact, it has been argued before this Court on behalf of the appellant that the accused persons had no annoyance with the talk between the deceased and Soni Khatoon but from the evidences on the record it would appear that this relationship was the reason behind the whole occurrence and the motive of the occurrence has been duly proved by the prosecution beyond all reasonable doubts.

18. Mr. Mishra, learned Additional P.P. submits that even if the evidences of PW-1, PW-2, PW-3, PW-5, PW-6 and PW-9 on the point of their actually having seen the appellant at the place of occurrence, are kept aside for a moment, the evidences of PW-7 and PW-8 remain intact and the defence has failed to impeach the

testimony of these two witnesses in course of their cross-examination.

19. Learned Additional P.P. submits that PW-7 and PW-8 are reliable witnesses, they had seen the appellant fleeing away from the room of the deceased. The defence has not questioned these two witnesses either about their presence at the place of occurrence or their inability in any form to identify the appellant. The defence has suggested that the appellant has been falsely implicated due to village politics but the suggestion is completely vague and has no basis to stand as nothing of that kind has been brought in evidence to show that there was any village politics for which the appellant would be falsely implicated.

20. Learned counsel submits that PW-7 has stated that the occurrence took place in the night at about 1:45 AM. She has stated that police was informed about the occurrence. Police came in the morning when written report was submitted by PW-8 to the I.O. The police station is situated at a distance of twelve kilometres from the place of occurrence and it would appear that after receiving written report, the police got involved in preparation of the inquest report and then the dead body was sent for postmortem. The dead body was received in the hospital at 4:15 PM on 20.04.2015, thus before that police had registered the FIR at 4:00

PM. It is submitted that the FIR was lodged within a reasonable period and for this purpose, it would appear that when the I.O. came in the dock, he was not questioned on this aspect of the matter. The fact remains that the written report was received immediately by the I.O. and thereafter the other formalities were carried out. In the case of **Hariprasad @ Kishan Sahu versus State of Chattishgarh** reported in **(2024) 2 SCC 557**, Hon'ble Supreme Court has considered the plea of delay in lodging of FIR and has discussed the previous case laws including one of **Tara Singh versus State of Punjab** reported in **1991 (1) Supp (1) 536**.

21. Learned counsel submits that it is a case of circumstantial evidence in which the prosecution has been able to establish the criminological chain of events and only and only one conclusion which may be reached on the basis of these evidences would be that the guilt of the appellant has been proved beyond all reasonable doubts. Relying upon the judgments of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra** reported in **(1984) 4 SCC 116** (paragraph '153') and in the case of **Rukia Begum and Others versus State of Karnataka** reported in **(2011) 4 SCC 779** (paragraphs '16' and '17'), learned Additional P.P. submits that all the five principle of

Panchsheel which would be governing a case of circumstantial evidence are duly proved in the present case.

22. Again, relying upon the judgment in the case of **Gian Chand v. State of Haryana**, reported in (2013) 14 SCC 420 (paragraphs '14' and '15'), learned Additional P.P. submits that if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness dock to give a full and proper explanation. This is the mandate of Section 138 of the Indian Evidence Act, 1872. It is submitted that in the present case although in course of hearing before this Court, learned counsel for the appellant has attempted to raise an issue with regard to the place of occurrence, it would appear from the deposition of the prosecution witnesses that the defence never questioned their statements made in examination-in-chief with regard to the place of occurrence and they were not even suggested at any point of time that the occurrence did not take place in the room of the house and PW-7 and PW-8 were not sleeping in the *verandah*, north to which is the room situated. Thus, following the ratio of the judgment in the case of **Gian Chand** (*supra*), the appellant cannot be allowed to raise any doubt with regard to the place of occurrence.

23. Learned Additional P.P. submits that much emphasis has been given by the learned counsel for the appellant on the deposition of the I.O. (PW-12) saying that the I.O. (PW-12) did not find any blood at the place of occurrence. In this regard, learned Additional P.P. has drawn the attention of this Court towards paragraph '9' of the deposition of the I.O. (PW-12) wherein he has stated that the dead body was lying on the cot but he did not remember whether there was any bedsheet on the cot or not. In the same breath, PW-12 has stated that he did not remember whether blood had fallen down or not. He has stated in paragraph '10' of his deposition that he had not seized the blood stained cloth of the deceased. The submission is that from the statement of the I.O. (PW-12) in paragraph '9' of the deposition it would appear that the deceased was killed while sleeping on his bed, blood may have fallen or not fallen on the earth/floor of the room. It appears that the memory of PW-12 was not intact, he was deposing after about two years four months from the date of occurrence and he clearly stated firstly that he did not remember whether the blood had fallen down or not. Having said so, his next statement in paragraph '10' that he had not found blood at the place of occurrence cannot be given much credence and that alone cannot be a ground to doubt the place of occurrence.

24. Learned Additional Public Prosecutor, therefore, submits that the learned trial court has rightly appreciated the evidences on the record and has committed no error in appreciation of the evidences. It is submitted that so far as the statement under Section 313 CrPC is concerned, on perusal thereof would show that the accused was apprised of the fact that the witnesses have stated to the effect that he had killed the deceased in sleeping condition by *chapar*. Learned Additional P.P. submits that the appellant did not come out with any explanation save and except to say “No”. In any case, the submission is that the appellant has failed to prove any prejudice caused to him because of any such incriminating circumstances which could not be brought to his notice. No such circumstance has been pointed out to this Court.

25. Learned counsel for the informant has endorsed the submission of learned Additional Public Prosecutor for the State.

Consideration

26. Having heard learned counsel for the appellant, learned Additional Public Prosecutor for the State and learned counsel for the informant as also on perusal of the learned trial court’s records, this Court finds that the prosecution in this case

has examined as many as 12 witnesses. PW-1 to PW-9 are the family members of the deceased and as the occurrence had taken place inside the house of the deceased, they are definitely the natural witnesses to the occurrence. PW-10 is the Doctor who had conducted the post-mortem on the dead body, PW-11 and PW-12 are the two Investigating Officers of this case. The defence has examined two witnesses, namely, Wasiran Khatoon and Md. Jabbar as DW-1 and DW-2 respectively. The prosecution witnesses are consistent as regards the relationship between the deceased and the sister of the appellant. All of them have stated that the said relationship is the cause of occurrence and motive behind the killing of the deceased. The defence has not even tried to impeach the prosecution witnesses as regards the relationship between the deceased and Soni Khatoon and all the prosecution witnesses have remained intact on this point, in fact having sensed this from the deposition of the prosecution witnesses, learned counsel for the appellant has argued before this Court that the evidence on the records show that it was the prosecution side who had annoyance with the said talking terms between the deceased and the sister of the appellant. It has been contended that the appellant had no annoyance because of the said relationship. To this Court, there is no hesitation in

accepting the case of the prosecution that the motive in this case has been well-established by oral testimonies of the prosecution witnesses as they are all consistent on this point.

27. As regards the occurrence which took place on 19.04.2015 at 01:45 am (night hours) and in fact by calendar, it would be 20.04.2015 at 01:45 am, all the prosecution witnesses have claimed themselves eye witnesses to have seen the appellant but we have on a careful perusal of the evidences on the record arrived at a conclusion that in this case, so far as the witnesses, namely, Rajendra Thakur, Yogendra Thakur, Suresh Thakur, Krishnandan Kumar and Ashok Thakur are concerned, they reached at the place of occurrence after the shouts and cries of the informant (PW-8). In this regard, we refer paragraph '13' of the deposition of PW-8. Whether these witnesses while coming to the place of occurrence had seen the appellant fleeing away from the room of the deceased may not be fully established through them but so far as the evidence of PW-7 and PW-8 are concerned, we find that they are the mother and the father respectively of the deceased who were sleeping in the *verandah* North to which is the room in which the killing had taken place. They are the most natural witnesses who were present and their claim that they had heard groaning voice of the

deceased whereupon they went to the room and saw the appellant fleeing away with blood stains '*chapar*' remains intact. The depositions of PW-7 and PW-8 have withstood the test of cross-examination and in course of their cross-examination by the defence, they have only been suggested that Subodh was killed by an unknown criminal and that they had lodged this case only to save themselves from the case which was lodged against them for setting at fire the house of the appellant. The fact is that this case has been lodged first. To this Court, it appears that PW-7 and PW-8 would fall in the category of wholly reliable witnesses and their depositions remain unimpeached. In the case of **Gian Chand** (supra), the Hon'ble Supreme Court has taken note of it's earlier judgment in the case of **Laxmibai (Dead) through LRS. and Another versus Bhagwantbuva (Dead) Through LRS. and Others** reported in **(2013) 4 SCC 97** and quoted paragraph '40' thereof which we would reproduce hereunder for a ready reference:-

“14. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in *Laxmibai v. Bhagwantbuva*² observing as under : (SCC p. 114, para 40)

2. (2013) 4 SCC 97 : (2013) 2 SCC (Civ) 480 : AIR 2013 SC 1204

“40. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination-in-chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.” (Emphasis supplied)

(See also *Ravinder Kumar Sharma v. State of Assam*³, *Ghasita Sahu v. State of M.P.*⁴ and *Rohtash Kumar v. State of Haryana*⁵)

3. (1999) 7 SCC 435 : AIR 1999 SC 3571

4. (2008) 3 SCC 52 : (2008) 1 SCC (Cri) 605 : AIR 2008 SC 1425

5. (2013) 14 SCC 434 : JT (2013) 8 SC 181

28. We, therefore, agree with the submission of learned Additional Public Prosecutor for the State that in a case where defence has not put any question to doubt the correctness of the statement of the prosecution witnesses as regards the place of occurrence and that they had seen the appellant fleeing away from the said place of occurrence, the deposition of the prosecution witnesses remains intact and cannot be questioned at this stage. This is the mandate of Section 138 of the Indian Evidence Act, 1872 which is quoted hereunder for a ready reference:-

“138. Order of examinations. – Witnesses shall be first examined-in-chief then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination. – The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.”

29. So far as the statement of the I.O. (PW-12) in paragraph ‘10’ of his deposition is concerned, it is evident that what he has stated in paragraph ‘10’ is not in consonance with his statement in paragraph ‘9’ of his deposition. The submission of learned Addl.P.P. on this point which has been taken note of in

paragraph '23' of this judgment are convincing and this Court would accept the same.

30. We conclude on the basis of the materials on the record and upon taking into consideration the judicial pronouncements that the evidence of PW-7 and PW-8 are in the nature of most reliable piece of evidence and by no stretch of imagination, their oral testimony may be doubted.

31. As regards a case of circumstantial evidence and the manner in which it is required to be proved, we have the celebrated judgment of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarad** (supra). Paragraph '153' of the said judgment is being quoted hereunder for a ready reference:-

“**153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra*¹⁹ where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

19. [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783]

“Certainly, it is a primary principle that the 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.

- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
- (3) the circumstances should be of a conclusive nature and tendency,
- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the 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.”

32. We would also quote paragraphs ‘16’ and ‘17’ of the judgment of the Hon’ble Supreme Court in the case of **Rukia Begum** (supra) hereunder for a ready reference:-

“**16.** No doubt it is true that for bringing home the guilt on the basis of the circumstantial evidence the prosecution has to establish that the circumstances proved lead to one and the only conclusion towards the guilt of the accused. In a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established. The circumstances so proved must unerringly point towards the guilt of the accused. It should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else. It has to be considered within all human probability and not in fanciful manner.

17. In order to sustain conviction, circumstantial evidence must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence. No hard-and-

fast rule can be laid to say that particular circumstances are conclusive to establish guilt. It is basically a question of appreciation of evidence which exercise is to be done in the facts and circumstances of each case.”

33. So far as the judgments of the Hon’ble Supreme Court on the importance of Section 313 Cr.P.C. are concerned, we have gone through the judgments. The relevant paragraphs from the case of **Raj Kumar @ Suman** (supra) are being reproduced hereunder:-

“**14.** Then we come to a decision in the case of Samsul Haque⁴ relied upon by the learned counsel for the appellant. In paragraphs 21 to 23, this Court held thus :

“**21.** The most vital aspect, in our view, and what drives the nail in the coffin in the case of the prosecution is the manner in which the court put the case to Accused 9, and the statement recorded under Section 313 CrPC. To say the least it is perfunctory.

22. It is trite to say that, in view of the judgments referred to by the learned Senior Counsel, aforesaid, the incriminating material is to be put to the accused so that the accused gets a fair chance to defend himself. This is in recognition of the principles of audi alteram partem. Apart from the judgments referred to aforesaid by the learned Senior Counsel, we may usefully refer to the judgment of this Court in Asraf Ali v. State of Assam [Asraf Ali v. State of Assam, (2008) 16 SCC 328 : (2010) 4 SCC (Cri) 278] : (2008) AIR SCW 5608). The relevant observations are in the following paragraphs : (SCC p. 334, paras 21-22)

4. [(2019) 18 SCC 161 : (AIR 2019 SC 4163)]

“21. Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

22. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed a similar view in [S. Harnam Singh v. State (Delhi Admn.), (1976) 2 SCC 819 : 1976 SCC (Cri) 324]: (AIR 1976 SC 2140) while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facets by the trial court to the accused adds to the vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise.”

23. While”

34. On facts, as regards the submissions that all the incriminating materials brought by the prosecution were not placed before the accused-appellant at the stage of Section 313 CrPC, we find ourselves in agreement with the submission of learned Additional Public Prosecutor for the State that the defence has not

placed before this Court any such incriminating circumstance which has been taken into consideration without bringing it to the notice of the accused. We find on perusal of the statement under Section 313 CrPC that the accused was apprised of the depositions of the prosecution witnesses and he was informed that the prosecution witnesses have stated that he had cut the neck of the son of the informant in the night of 19.04.2015 when he was sleeping inside the room by a sharp cutting weapon. Thus, the place of occurrence and the weapon with which the crime was committed and the evidence in this regard of the witnesses were informed to the appellant. The appellant did not offer any explanation to the same and simply said “No”. We do not find any substance in the submission of learned counsel for the appellant on this issue. In view of the findings arrived at on this point, we are of the view that the propositions of law laid down by the Hon’ble Supreme Court in the case of **Raj Kumar @ Suman** (supra) (paragraph ‘13’) would not be applicable in this case.

35. In this case, learned counsel for the appellant has taken a plea that as per PW-7, the occurrence took place in night at about 01:45 am and she informed the Police about the occurrence. According to her, police came in the morning when written report was submitted by PW-8 to the I.O. He has submitted that there has been a delay in recording of the first information report and the fact that the police was informed about the occurrence by PW-7 shows

that the first prosecution version has been suppressed. We do not find merit in this contention. The occurrence took place at about 01:45 am (night hours) and the police station is situated at a distance of 12 kilometers. The delay of few hours in arrival of police and submission of written report by PW-8 in the morning when police arrived at the place of occurrence cannot be doubted in the circumstances of this case. Neither PW-7 nor the I.O. who has deposed in this case as PW-12, have been questioned on this point by the defence. In the case of **Tara Singh** (supra), the Hon'ble Supreme Court, while considering the plea of delay has observed in paragraph '4' as under:-

“4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report.”

36. We have also noticed the evidence of defence witnesses and we find that the evidence of the defence witnesses are not trustworthy. DW-1 has clearly stated in her cross-examination that she was deposing on the basis of the information furnished by Md. Jabbar who is the father of this appellant and she had made statement in her examination-in-chief what she was told

by Md. Jabbar. Md. Jabbar (DW-2), who is the father of this appellant, has come to depose in order to save his son in the present case. We find that the defence witnesses are not reliable and trustworthy.

37. Keeping in view the entire evidence on the record and the judicial pronouncement on the subject by the Hon’ble Supreme Court, we find ourselves persuaded to hold that in this case, the prosecution has been able to prove the guilt of the appellant and the criminological chain of events have been duly proved in this case. There cannot be any other conclusion save and except to which the learned trial court has reached.

38. In result, we find no error in the impugned judgment and order of the learned trial court.

39. This appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

SUSHMA2/-

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