

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3140 of 2017**

**In
CRIMINAL APPEAL (DB) No.1076 of 2017**

Arising Out of PS. Case No.-47 Year-2007 Thana- MOHIUDDIN NAGAR District-
Samastipur

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Sushil Kumar @ Sushil Kumar Sah @ Pintu Sah S/o Late Rajendra Sah R/o
Vill and P.O - Mohaddi Nagar, P.S. - Mohaddi Nagar, Distt.- Samastipur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Amit Narayan, Advocate
Mr. Abhigyan Kumar, Advocate
Mr. Ashwani Kumar, Advocate
Ms. Shikha, Advocate

For the State : Mrs. Anita Kumari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT**

Date : 18-04-2024

Mr. Amit Narayan, learned counsel for the Appellant
and Mrs. Anita Kumari Singh, learned APP for the State are
present and they are heard on the merit of this appeal.

2. The instant appeal has been filed against the judgment
of conviction dated 31.07.2017 and order of sentence dated
04.08.2017 passed in Sessions Trial Case No. 106 of 2009 by the
learned Presiding Officer, Fast Track Court-2nd, Samastipur
whereby and whereunder the appellant has been convicted for the



offences punishable under Sections 498A and 304B of the Indian Penal Code (in short 'IPC') and he has been sentenced to undergo rigorous imprisonment for two years for the offence under Section 498A of IPC with a fine of Rs. 5,000/- in default of payment of fine he has been directed to undergo additional six months of simple imprisonment and directed to undergo ten years of rigorous imprisonment for the offence punishable under Section 304B of IPC. All the sentences of imprisonment have been directed by the learned trial court to run concurrently.

3. Appellant and two co-accused namely, Anil Kumar Sah and Jogmaya Devi were charged for the offences under Sections 498A and 304B read with Section 34 of IPC and they faced trial together but the accused Anil Kumar Sah and Jogmaya Devi were acquitted of the charged offences by the trial court.

4. The substance of the allegations levelled against the appellant by the prosecution is that the informant's sister namely, Anju Kumari was married to the appellant on 02.06.2006 and a sum of Rs. 50,000/- had already been deposited in the name of Anju Kumari (hereinafter referred to as 'victim') and the appellant jointly in the post office prior to the solemnizing of their marriage. After the marriage, the appellant and his mother started torturing the victim for the demand of a motorcycle and pressurized her to



withdraw the said Rs. 50,000/- from the post office and the appellant pressurized the victim to make a demand of the motorcycle from her brother as he(appellant) was facing trouble in his business of marketing and when the victim's family showed their inability to fulfill the appellant's demand, the appellant and his family members started torturing the victim and in this regard several complaints were made by the victim to his brother(informant) and finally on 09.04.2007 an anonymous person informed the informant through a mobile phone's communication that the victim had died. The informant suspected that the appellant, his mother, brother and one Prahlad Kumar administered poison to his sister(victim) which resulted in her death on 08.04.2007 in the night.

5. Mr. Amit Narayan, learned counsel appearing for the appellant has argued that on the same set of evidence two co-accused were acquitted by the trial court while the appellant was convicted and the prosecution failed to prove the allegation that the deceased was subjected to any type of cruelty or torture soon before her death and also failed to prove the allegation of forceful poisoning to the victim by the appellant and all the material circumstances coming out of the prosecution's evidences which are against the appellant, were not explained to the appellant so the



mandatory provision of Section 313 of Cr.P.C. was not followed by the learned trial court. It is further argued that the FIR is not reliable as the same is anti-dated and in this regard, the inquest report may be perused.

6. On the contrary, Mrs. Anita Kumari Singh, learned APP appearing for the State has argued that the deceased who happened to be wife of the appellant died an unnatural death within one year of her marriage and the FSL report of the viscera of the deceased clearly goes to show that the deceased died due to poisonous material and the material witnesses of the prosecution supported the allegation of cruelty which was being committed with the deceased by the appellant and others for the demand of Rs. 50,000/-.

7. Heard both the sides, perused the judgment impugned and evidences available on the case record of trial court and also gone through the statement of the appellant.

8. Mr. Amit Narayan, learned counsel appearing for the appellant has raised the first contention that the appellant and his two relatives were charged and tried together for the same offences and on the same set of evidences the co-accused Anil Kumar Sah and Jogmaya Devi were acquitted while the appellant was convicted which is against the settled principle of the law. In



support of this contention, learned counsel for the appellant has placed reliance upon the judgment of Hon'ble Apex Court passed in the case of **Ram Singh Vs. The State of U.P. in Criminal Appeal No. 206 of 2024**, decided on 21.02.2024 and the relevant paragraph of this judgment is being reproduced as under:-

“32. This Court in the case of Javed Shaukat Ali Qureshi, has held that when there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. This Court clarified as under:-

15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal court should decide like cases alike, and in such cases, the court cannot make a distinction between the two accused, which will amount to discrimination.”



9. In view of above observation made by Hon'ble Apex Court in the above cited judgment, this Court finds substance in the above contention of appellant's counsel as on the same set of evidence the appellant's mother was acquitted but the appellant was convicted by the trial court and while acquitting the co-accused, the learned trial court mainly took into account the fact that the appellant and other co-accused were residing separately but in this regard, no discussion of any evidence was made by the trial court and moreover, in this regard, the prosecution has not drawn attention of this Court to the statements of the prosecution witnesses except investigating officer to prove the separate residing of the appellant from his family members at the relevant time of the commission of the alleged occurrence and merely the investigating officer's evidence does not seem to be reliable to prove the said fact.

10. The second contention made by appellant's counsel is that the prosecution failed to prove the fact that the victim was subjected to any type of cruelty or torture by the appellant soon before her death and also failed to prove the allegation of poisoning the victim by the appellant as any of the prosecution witnesses including the investigating officer who inspected the place of occurrence, did not find any sign of poisoning to the



victim and the postmortem report also does not show any type of external or internal injury to the deceased(victim) which is sufficient to disprove the allegation of forceful poisoning to the victim and in this regard, the evidence of Investigating Officer is very material. Learned counsel further submits that the doctor concerned who conducted the postmortem examination was unable to find out the cause of death of the deceased, so he preserved the viscera of the deceased and sent the same to the Forensic Science Laboratory (FSL) and in the FSL report (Ext.6) it was opined that ***‘Aluminium Phosphide was detected in the dark brown fluid contained in the glass jar’*** but the said finding given in the FSL report is completely unreliable as firstly the parcel contained the viscera in a jar was received on 20.09.2007 at the FSL department, more than two months after preserving the viscera and secondly, the tissues of viscera were found in decomposed condition in the glass jar when the same were examined by an expert and thirdly the FSL report was prepared on 29.08.2012 several years after the receipt of the viscera at FSL. In support of these submissions, learned counsel has placed reliance upon the judgment of this Court passed by the **Hon’ble Division Bench** in the case of **Ramashish Mahto Vs. The State of Bihar in Criminal Appeal**



(DB) No. 284 of 2015 and the relevant paragraphs upon which reliance has been placed are being reproduced as under:-

“61. Let us examine now as to whether the prosecution has been able to prove that the deceased died an unnatural death. We have seen that there is absolutely no evidence relating to poison in relation to the deceased. The doctor, who treated the deceased before her death at the Primary Health Center, Madanpur has not been examined during trial. The prosecution has failed to bring on record any paper relating to the treatment provided to the deceased at the Primary Health Center, Madanpur. The doctor treating the victim at the Primary Health Center was the best person, who could have thrown some light on the cause of her death and the ailment with which she was suffering. Not only this, P.W.5, a doctor and a member of the Medical Board, which conducted the postmortem examination on the body of the deceased stated in his evidence that he did not notice any ante-mortem injury or mark of violence on the body of the deceased. In case of forcible poisoning by use of any kind of poison, there would be struggle and resistance from the victim and there would



be some marks on her body. In the present case, as stated above, there was no mark of violence.

62. Insofar as the question of froth and bad smell coming from the mouth and nostril of the deceased is concerned, it has rightly been pointed out by the learned counsel for the appellant that there is no such mention either in the FIR or in the inquest report.”

11. This Court finds substance in the above contention of the appellant's counsel as no sign of forceful poisoning to the victim (deceased) was found by the investigating officer who inspected the place of occurrence where the victim's dead body was found and none of other prosecution witnesses said anything about the signs of poisoning being present on the body of the deceased or near her body at the place of occurrence. The dead body of the deceased did not have any external or internal injury and the findings given by the doctor in the postmortem report as well as the contents of the inquest report(Ext.-4) also do not show any forceful poisoning to the victim. Here, it is pertinent to mention that as per defence taken by the appellant, the victim was suffering from some disease and she was under treatment. Some material witnesses of the prosecution accepted that near the dead body of the deceased *Saline solution bottle* was found and in this



regard, some witnesses were also produced by the appellant in defence and among them the names of D.W.-1, D.W.-2 and D.W.-3 find place in the chargesheet as prosecution witnesses but none of them was produced and examined by prosecution and the prosecution failed to give any details to show that the said witnesses were given up by the prosecution during trial. The FSL report, inquest report and the evidence of prosecution witnesses do not suggest that the victim was poisoned forcefully by the appellant and the finding given in the FSL report in respect of the examination of viscera of the deceased is also not reliable in view of the circumstances pointed out by the appellant's counsel discussed above. Accordingly, the prosecution failed to prove the allegation that the appellant poisoned his wife and committed her dowry death and on account of absence of any external or internal injury on the body of the deceased, it can be safely presumed that the victim was not subjected to any type of cruelty or torture soon before her death, so one of the main ingredients of Section 304B of IPC is lacking in the present matter, accordingly, in the light of the principles laid down by Hon'ble Division Bench of this Court in the above-mentioned judgment, this Court finds substance in the above contention of the appellant's counsel.



12. The third contention raised by appellant's counsel is that the statement of the appellant recorded by the trial court under Section 313 of Code of Criminal Procedure (in short 'Cr.P.C.') was not proper as all the material circumstances and evidences coming out of the prosecution's evidences upon which the trial court placed reliance, were not explained to the appellant which is against the principle settled by the Hon'ble Apex Court. In support of this contention, learned counsel has placed reliance upon the judgment of this Court passed by the **Hon'ble Division Bench** in the case of **Rajesh Ravidas Vs. The State Of Bihar in Criminal Appeal (DB) No. 1075 of 2018** and the relevant paragraph upon which reliance has been placed is being reproduced as under:-

“22. Further, we have quoted hereinabove the question which was put by the trial court while examining the appellants under Section 313 of the CrPC. It has been rightly pointed out that the trial court has relied on the report of Forensic Science Laboratory(Exhibit-5). It was incumbent upon the court to have questioned the appellants on the point of the finding of the Forensic Science Laboratory. The same having not been done, the trial court ought not to have relied upon the report of the FSL. It has been repeatedly held by the Supreme Court and this Court



that a circumstance not explained to an accused, while being examined under Section 313 of CrPC, cannot be used by it for recording the findings of his conviction.”

13. This Court finds substance in the above contention as several material circumstances and evidences such as the finding given by the FSL department in the FSL report and the contents of the inquest report etc were not put and explained before the appellant under Section 313 of Cr.P.C. and the appellant's statement was recorded in mechanical manner by the trial court which was not proper and against the spirit of Section 313 of Cr.P.C. Accordingly, this Court finds substance in the above contention of the appellant's counsel and the principle laid down by this Court in the above-mentioned judgment is helpful to the above contention of the appellant's counsel.

14. The fourth contention made by the appellant's counsel is that the FIR of the instant matter is not reliable as the same is anti-dated and in this regard, the inquest report (Ext. 4) may be perused. Learned counsel further submits that the formal FIR shows that the FIR was received on 09.04.2007 at 11:00 AM and the inquest report (Ext.-4) goes to show that the said report was prepared on 09.04.2007 at 9:30 AM which clearly indicates that the inquest report had been prepared prior to the registration



of the formal FIR, so in the light of principles laid down by the Hon'ble Courts, the FIR of the instant matter is not reliable and the same is sufficient to cast a serious doubt on the prosecution's allegation. In support of this argument, learned counsel for the appellant has placed reliance upon the judgment of the **Hon'ble Division Bench of this Court** passed in the case of **Ramashish Mahto Vs. The State of Bihar (Supra)** and the relevant paragraphs of the said judgment upon which reliance has been placed, are being reproduced as under:-

“58. In that view of the matter, when we scrutinize the evidence further, we find that the oral statement of the informant was recorded at 08:00 PM on 09.07.2010 at Primary Health Center, Madanpur. The investigating officer has stated in his evidence that firstly the FIR was registered and, thereafter, the inquest report was prepared. However, when we look at the inquest report, we find that the inquest report was prepared on 09.07.2010 at 07:00 PM, i.e., an hour before the recording of the fardbeyan. We further find that the inquest report contains the signature of the informant Baij Nath Mahto and P.W.3 Ravindra Mahto.



59. Apparently, the inquest report was prepared prior to the institution of the FIR. Thereafter, the oral statement of Baij Nath Mahto was recorded at Primary Health Centre, Madanpur on 09.07.2010 at 08:00 PM, which was treated as FIR. The discrepancy in the evidence of the investigating officer, the fardbeyan and the inquest report further creates doubt about the authenticity and credibility of the FIR.

60. Learned counsel for the appellant has rightly submitted that the FIR has lost its credibility particularly because the initial version has been suppressed from the court.”

15. This Court finds substance in the above contention as it is clearly evident that the FIR was registered after the preparation of inquest report but surprisingly, the inquest report has the number of formal FIR upon it while the same had been prepared prior to the preparation of the formal FIR and the said circumstance casts a serious doubt on the credibility of the FIR.

16. After having heard both the sides and on perusal of the evidences available on the case record for the reasons mentioned above, this Court finds substance in the contentions raised by the appellant's counsel discussed above. Though the



prosecution succeeded in proving the unnatural death of the deceased in the house of the appellant but failed to prove that the death of the deceased was a result of any cruelty committed by the appellant and the FSL report (Ext.-6) is not reliable in view of the circumstances discussed above and if the finding given in the FSL report is taken to be true even then the prosecution failed to prove any material to show the forceful poisoning to the deceased by the appellant or his family members and furthermore, the FIR does not seem reliable as the inquest report of the deceased which is said to have been prepared prior to the registration of the FIR, contains the details of the FIR number upon it and the said circumstance has not been explained by the prosecution. Accordingly, this Court forms the opinion that the prosecution's evidences were not properly appreciated by the trial court and the above discussed circumstances going in favour of the appellant demand a benefit of doubt to be given to the appellant. In the result, the judgment and order impugned convicting and sentencing the appellant for the charged offences are hereby set aside and the instant appeal stands allowed.

17. The appellant is in jail so, he is directed to be released forthwith if his custody is not required in any other matter.



18. Let the judgment’s copy be sent to the trial court and jail superintendent concerned for needful.
19. Let the trial court’s record be sent to the court concerned.

(Shailendra Singh, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	23.04.2024
Transmission Date	23.04.2024

