

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1279 of 2019

Arising Out of PS. Case No.-22 Year-2016 Thana- PIRBAHOR District- Patna

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PAPPU PRASAD @ PAPPU KUMAR, S/o Shri Ganesh Prasad, R/o Village-
Sampatchak Sohgi Khushpar, P.S.- Gaudichak, District- Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ansul, Advocate Ms. Eashita Raj, Advocate Mr. Pramod Kumar, Advocate
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 20-09-2024

We have heard Mr. Ansul, the learned Advocate for the sole appellant and Mr. Dilip Kumar Sinha, the learned APP for the State.

2. The appellant has been convicted under Sections 302 and 309 of the Indian Penal Code *vide* judgment dated 07.09.2019. By order dated 09.09.2019, he has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 10,000/- under Section 302 of the IPC and to undergo SI for one



year, to pay a fine of Rs. 5,000/- under Section 309 of the IPC.

3. Both the sentences have been ordered to run concurrently.

4. This is a tragic case where a young girl has died and it has been alleged that her father/appellant, administered a soft drink laced with poison to her. The *viscera* report confirmed that the dark brown fluid which was collected from her stomach during postmortem and sent for chemical examination contained Aluminum Phosphide which is commercially known as Celphos and is a severe gastrointestinal irritant. It is also used as a grain preservative and is highly poisonous.

5. The mother of the deceased, viz., Guriya Devi (PW-5) lodged the *fardebayan*, which is the basis for prosecuting the appellant, her husband. According to her story, somebody informed her at about 7:00 AM on 22.01.2016 from PMCH that her husband and her children have consumed poison. She immediately



rushed to PMCH along with her son, viz., Nishant Kumar (PW-3). She found one of her daughters, viz., Lily Kumari (15 years) dead in the Emergency Ward of PMCH. The appellant and two other daughters, viz., Nishu Kumari (PW-1) and Chhoti Kumari (PW-2) were being treated in the hospital. Their condition also was reported to be serious. Nishu Kumari (PW-1), on being asked by her, informed that the appellant had mixed poison in the soft drink (*Maaza*) and had made her and her sister drink it. The appellant also had consumed the poison mixed cold drink. This made Nishu (PW-1) nervous, who came out of the house to report about the occurrence but she was prevented by the appellant. In the meantime, the situation of Lily grew serious. Later, with the intervention of local people, the members of the local administration arrived and brought all of them to PMCH. PW-5 was further informed that Lily was declared dead on her arrival at the PMCH. In her *fardbeyan*, she has also alleged that her husband had



illicit relationship with one Sonam Devi and that was the cause of the domestic squabbles for a long time. Precisely, because of that disturbed family relationship, an attempt was made by the appellant to commit suicide after killing the other children. The occurrence, according to her, had taken place in the night of 21.01.2016 at about 10 O'clock.

6. On the basis of the aforementioned *fardbeyan* statement of PW-5, a case vide Pirbahore P.S. Case No. 22 of 2016 dated 22.01.2016 was registered for investigation, initially under Sections 304 and 309 of the IPC. Later, Sections 302 and 328 were also added.

7. The appellant was charge-sheeted, whereafter he was tried.

8. The Trial Court, after having examined seven witnesses on behalf of the prosecution and four on behalf of the defence, convicted and sentenced the appellant as aforesaid.

9. Mr. Ansul, the learned Advocate, while



assailing the Trial Court judgment has argued that the evidence on record was not appreciated by the Trial Court in correct perspective. The basic principles of appreciating the evidence were ignored by the Trial Court. The implicit reliance of the Trial Court on the deposition of two of the daughters of the appellant, who were of very young age and could not have been called sterling witnesses because of the inconsistent statements made by them, has unfortunately resulted in the unmerited conviction and sentence of the appellant.

10. He has further argued that the Investigator took no steps to find out the truth and had adopted a most shortcut approach of believing every word of what the informant (PW-5) had to say; notwithstanding the fact that the relationship of PW-5 with her husband (appellant) was going through a rough patch and *prima facie*, it appeared to be a retaliatory move on the part of an estranged wife to implicate her husband for the death of a young girl, which was very fortuitous. There



is no evidence on record of any poison mixed with the drink at the behest of the appellant. There is also no evidence of any treatment to the other two surviving daughters of PW-5 as also of the appellant, all of whom had consumed the contaminated drink. Though the forensic report discloses the presence of Celphos in the stomach fluid of the deceased, but only on that basis, it has been argued, the prosecution cannot be given the certificate of having proved the case beyond all doubts. There could be myriad circumstances for the presence of Celphos in the stomach fluid of the deceased. The deceased was residing in the house along with her other siblings in the absence of her parents i.e. the appellant and PW-5. The appellant had been called by his own children only from Chennai as PW-5, their mother, had run away from the house. All these instances are definite pointers towards a disturbed family with straitened financial circumstances. There is nothing on record to indicate about the vocation of the appellant



and his source of livelihood. However, what comes out from the evidence of the witnesses is that the mother of the deceased was working as a cook in a hostel. In the background of the dispute between the husband and wife, both doubting each other's fidelity, the Trial Court ought to have understood that the accusation through the mouth of children had to be appreciated in correct perspective. There was every possibility of those witnesses being tutored.

11. After all, it has further been argued, at the time of deposing before the Trial Court, the children were being financed by the mother. Without such appreciation, the Trial Court has wrongly jumped to the conclusion that the appellant attempted to kill his children in one go and also tried to commit suicide thereafter.

12. As opposed to the aforementioned contentions, Mr. Dilip Kumar Sinha, the learned APP has submitted that the Trial Court was absolutely satisfied about the



capabilities of PWs. 1 and 2 of understanding the nature and import of their statements before the Court. The cumulative reading of the depositions of PWs. 1, 2 and 3, the children of the appellant, it becomes very clear that for some reason, may be out of desperation or frustration, the appellant took the extreme step of killing his own children and also putting an end to his own life. His vocation was not known and his wife had left the household. The spouses were fighting for a long time. The appellant acted as a weakling and wanted to get over his troubled life. He may be sympathized with, but in any way, he cannot be condoned for the attempt to kill himself after killing his own children. The attempt of the appellant in killing his children turned out to be partially successful as one of the child died whereas the others miraculously survived.

13. Under such circumstances, Mr. Sinha has argued that mere inconsistencies in the statement of child witnesses ought not to be magnified and be taken



as a ground for disbelieving the prosecution case in its entirety. If the children were being financed by the mother, the father also had been taken care of them. It was only on the asking of the daughters, that the appellant had come back from Chennai. There is nothing on record, Mr. Sinha argues, which would indicate that the appellant had abandoned his responsibilities as a husband and a father. In that case, if he were impelled to take this extreme step, the law would not guarantee him a sympathetic treatment and that is what the Trial Court has done in convicting the appellant for the offences under Sections 302 and 309 of the IPC.

14. We have examined the records of this case in detail. No doubt, Nishu Kumari and Chhoti Kumari (P.Ws.1 and 2), the two daughters of the appellant, have spoken about their father having administered cold drink to them and both of them felt uneasy after consuming it but the other disclosures made by them



before the Trial Court make such an accusation absolutely untrustworthy.

15. We have examined their deposition with caution and circumspection, knowing fully well that they being children of very young age have limited outlook as well as limited vocabulary. What comes out from their deposition is that their mother had left the house after making all arrangements for food. Grains were kept in the store. Perhaps the food had to be prepared by the two sisters. The mother had gone out of the house in anger and perhaps in a huff. We say this for the reason that one of the girls has very clearly stated that because the mother had gone out of the house, being angry with the father, the father was called by the girls to come back home. This is a very natural statement of both the witnesses which depict that the children found solace in the father and mother alternatively, depending upon the exigencies of the situation.



16. Nishant Kumar, the son of the appellant, appears to have been residing with his mother. The mother had come to PMCH alongwith Nishant Kumar. His statement is not of great worth except of disclosing that the family was passing through a troubled time.

17. In this context, we have also examined the deposition of Rubi Devi (PW-4), the estranged sister-in-law of the appellant. The mother of the deceased (PW-5) had been residing with Rubi Devi. Rubi knew about the inter-personal dispute between the appellant and PW-5. The reason was the same, viz., appellant seeing another lady, viz., Sonam who was the landlady of the appellant. It is for this reason that we have not found Guriya Devi (PW-5) to be a sterling witness so far as the accusation against the appellant is concerned.

18. In her examination-in-chief, she has very categorically stated that because of the association of the appellant with Sonam Devi, her family life is disturbed and she had come out of the household and



had gone to stay with PW-4, who too had a tumultuous married life.

19. The reason for PW-5 to doubt her husband/appellant was that she had seen some messages sent by the appellant to Sonam. The suggestions given to her during trial about her relationship with one Sanjay Kumar, a friend of the appellant, have but vehemently been denied by her. She was also suggested that she had perhaps, for keeping the food-grains safe for a longer time, had mixed celphos which perhaps was consumed by one of the daughters mistakenly, which also was denied by her.

20. The instance of disturbed family life is further reflected from the fact that PW-5 has alleged that for about nine years after her marriage with the appellant, he supported the family financially but thereafter she had to take up the work for providing finances.



21. There is yet another aspect of the evidence which has caught our attention straightaway. PW-5 has not denied that on several dates, money was transmitted in her account. She has expressed her naivete in expressing her complete ignorance about the sender of such money.

22. The appellant, on the other hand, claims that he had been sending money to his wife regularly. It was thus, according to the appellant, the wife (PW-5) who had abandoned her responsibilities and had run away from the house. With that mindset, it was very easy for her to put the blame on her husband/appellant. The appellant, as a defence witness, has given the details of the amounts remitted by him in the bank account of his wife (PW-5).

23. Keeping these facts aside, what is again lamentable is that the Investigator made no efforts to come to the truth. The least that he could have done was to know from the outsiders, neighbours and



perhaps the other relatives of the appellant and PW-5 about the family, their financial status and the relationship between the spouses. It should have struck the Investigator to find out the reason for both the parents of the deceased and other children to have left them unfended for.

24. From where the poison obtained?

25. If the FIR was the basis for starting the investigation by the Investigator, some efforts must have been made to know about the impact of the poisonous cold drink on the other daughters and the appellant himself, all of whom had allegedly consumed the drink. PW-5, on being informed by some unknown person from PMCH about the happening, came to the PMCH and found one of her daughters dead, whereas other daughters and the appellant getting treatment for consumption of poisonous liquid.

26. There would have been some record of it. Nothing has been collected by the Investigator so as to



lend assurance to the story of the prosecution of the appellant forcibly administering the poisoned drink to his children and then consuming it himself.

27. There is no evidence at all of the drink having caused any impact on anyone else except the unfortunate youngest daughter of the house.

28. We have also examined the postmortem report. Dr. Shiv Ranjan Kumar (PW-6) had conducted the postmortem on 22.01.2016 at about 03.30 PM. He had found rigor mortis present all over the body. The nails and lips had turned blueish. The eyes and mouth were closed. There were no external injuries on the body. The stomach contained cream coloured fluid. The internal organs were found to be congested.

29. He chose to preserve the *viscera* in routine. However, regarding the cause of death, though he awaited the *viscera* report, but in his cross-examination, has stated that there could be many reasons for the death of the deceased.



30. The *viscera* though was sent promptly and received in the laboratory also within time but the report was submitted only after six months. It appears that it was only a routine finding of celphos. Even if the report were true, as it is necessarily to assume that there is nothing to doubt the competence of the person who conducted the test, there could be a possibility of the deceased having consumed some poisonous substance inadvertently.

31. One of the daughters has even gone to the extent of saying that the deceased was strangled by the appellant.

32. This further reflects that the witnesses were making up stories.

33. This could not have been their imagination as the fecundity of a child's brain is limited.

34. Were they being tutored by their maternal uncles and mother?

35. We do not know.



36. The lack of investigation further confirms this.

37. Taking a holistic view of the matter, we are not in a position to believe the deposition of PWs. 1 to 5. The investigation of this case is absolutely shoddy.

38. For the aforementioned reasons, we are not in a position to put our imprimatur on the Trial Court's judgment of conviction and sentence.

39. We thus set aside the conviction and sentence of the appellant and acquit him of all the charges, giving him the benefit of doubt.

40. The appeal stands allowed.

41. The appellant is in jail for about eight years by now. He is directed to be released forthwith if not required to be detained in any other case.

42. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

43. The records of this case shall also be



transmitted to the Trial Court forthwith.

44. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Sunil Dutta Mishra, J)

Rajesh/Ritik

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.09.2024
Transmission Date	24.09.2024

