

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 314 of 1995

Shri Bhagwan Sao, son of Gambhira Sah resident of village Khurnu P.S.-
Sasaram (Agrer) District-Rohtas

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance:

For the Appellant : Mr. Venkatesh Kirti, Adv.

For the State : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 14-08-2025

The present appeal has been preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr.P.C.”) against the judgment of conviction and order of sentence dated 04.09.1995 and 07.09.1995 respectively, passed by the 7th Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 418 of 1989 (arising out of Sasaram (Agrer) P.S. Case No. 94/88), whereby and whereunder the sole appellant has been convicted under Section 302 of the Indian Penal Code (hereinafter referred to as “the I.P.C.”) and sentenced to undergo imprisonment for life.

2. The short facts of the case are that the present case was registered on the basis of the fardbeyan of one Kalawati Devi



(PW-2 and wife of the Appellant), recorded by the Sub-Inspector of Police, Agrer, namely Sri S. Pandey on 27.02.1988 at 15:00 hours at the house of Kalawati Devi (hereinafter referred to as “the informant”). The informant has stated that her marriage was solemnized six years back with Sri Bhagwan Sao (appellant herein) and her *Duragaman* (दुरागमन, i.e bride's first formal entrance into her new family's household after visit to her own family's home following the wedding ceremony) was performed three years back and after seven months of living with her family, she had conceived as also was bearing a three months old fetus, about which she had not informed her husband because otherwise they would not have sent her back to her parental home. The informant has further stated that while she was going to her parental home, she had informed her family members about the child in her womb and when she was at her paternal home, efforts were made by the appellant to abort the fetus, however on account of her pressure, the same could not be done. In fact, she was also taken to a doctor for abortion by the appellant but on account of her resistance, she was brought back to her home. In fact, a bottle of poison along with a letter was also sent to her at her parental home by the appellant, wherein it was written that after the child is born one



spoon of poison be given. After the informant had given birth to a son, her father-in-law had come and asked her father to let her take the informant to his house, however the father of the informant had shown him the bottle of poison and the letter and told him that under such condition, it would not be proper to send the informant along with him. After one month, the informant's husband and brother-in-law, namely Sri Ram Sao had come to the paternal home of the informant to take her away, when her husband had asked her as to why she had not given poison to the child and had also asked her to accompany him to his home, whereupon the informant had told him that she will not go along with him for getting her child killed. On account of the aforesaid facts, the father of the informant had not allowed her to go to her in-laws' house. It is also stated by the informant that in between her husband used to send letters wherein he used to write erroneous and filthy things which she had kept in her box, but when she had gone to her in-laws' place and opened the box, her mother-in-law, father-in-law and brother-in-law had hidden the said letters.

3. The informant has further stated in her fardbeyan that after two years, her husband Sri Bhagwan Sao and father-in-law Gambhira Sao had come to her parental home on Tuesday for



taking her away, whereafter she along with her husband, her father-in-law and deceased son had gone to her in-laws' house on Thursday and arrived there at about 12:00 in the afternoon. Thereafter, the informant along with her husband and child had slept on a cot in a room on the southern side and on the next day also i.e. in the night of Friday, after the child had slept, she slept on the same cot and her husband, after eating his food, had also come to the same room to sleep. The informant, after having food, had gone to apply oil on the body of her mother-in-law and after applying oil when she came back in her room to sleep, she found the lantern to be shut and when she tried to search for matchstick on account of it being dark, her husband did not give it to her and told her to sleep besides the cot on the floor but instead of sleeping on the floor she slept along with her child and husband. The child was sleeping in the middle of the cot and she being tired also slept there. In the morning, her husband had woken her up and had told her that the child is sleeping so she should complete her work, whereupon the informant told him that she would first feed her child then she will go for work since the child has not been fed for whole night and in the meantime, her husband had gone outside the room. Thereafter, while the informant had tried to lift the child, she



found him to be dead leading to her crying and shouting and in the meantime, her father-in-law and mother-in-law took away the child. The informant had then tried to go outside the house and jump into the well but many people were present there who told her not to do so. In the meantime, the father-in-law and brother-in-law of the informant and many people from the village had together buried the dead child outside the village. The informant has stated that it is her belief that her small child Raju, aged about two years has been killed by her husband by pressing his neck in the knowledge of her father-in-law, mother-in-law and brother-in-law, whereafter they have buried the dead child outside the village along with the villagers. The informant upon finding the fardbeyan to have been written correctly, had put her thumb impression over the same in presence of a person of the village, namely Sudarshan Singh (P.W.5).

4. On the basis of the aforesaid fardbeyan of the informant, a formal F.I.R. bearing Sasaram (Agrer) P.S. Case No. 94/88 was registered on 28.02.1988 at 10:00 am under Section 302/201/34 of the I.P.C. against the appellant and three others, namely Sri Ram Sao, Gambhira Sao and Laxmina Devi. The police had then conducted investigation and upon finding the incident to be true had submitted a charge-sheet on 10.06.1988 against the



aforesaid four accused persons, whereafter the learned Trial Court had taken cognizance by an order dated 16.06.1988. The learned Trial Court had then committed the case to the Court of Sessions vide order dated 07.07.1989 and the case was numbered as Sessions Trial No. 418/89 (arising out of Sasaram (Agrer) P.S. Case No. 94/88). The learned Trial Court had then framed charges against all the four accused persons under Section 302/34 and 201 of the I.P.C. and against the appellant under Section 302 of the I.P.C. on 05.01.1990.

5. The prosecution has examined altogether seven witnesses out of which P.W.3 Shrawan Paswan (chaukidar) and P.W.5 Sudarshan Singh (co-villager) have been declared hostile. P.W.4 Vijay Yadav is also a village chaukidar, while P.W.6 Sidheshwar Pandey is the investigating officer of the present case and P.W.7 Dr. Naresh Pd. Rai had conducted the postmortem examination of the deceased child. P.W.1 Laxman Sao is the father of the informant and P.W.2 Kalawati Devi is the informant herself.

6. The prosecution had also exhibited certain documents, which are being enumerated herein below:-

Ext. 1	Signature of Sudarshan Singh on Fardbeyan
Ext. 2	Fardbeyan
Ext. 3	Inquest report
Ext. 4	Postmortem report

7. The learned counsel for the appellant has submitted that a



bare perusal of the evidence of the prosecution witnesses would show that there is grave contradictions and inconsistencies. It is stated that as far as P.W.3 Shrawan Paswan, P.W.4 Vijay Yadav and P.W.5 Sudarshan Singh are concerned, no evidence of any worth can be culled from their deposition so as to prove the guilt of the appellant. P.W.6 Sidheshwar Pandey i.e. the Investigating Officer has also in his evidence not disclosed about any substantial investigation having been undertaken by him which can lead to proving of the charges levelled against the appellant, even by way of circumstantial evidence. As far as P.W.1 Laxman Sao i.e. the father of the informant is concerned, he is not an eye-witness to the alleged occurrence and his evidence also does not instill any confidence so as to prove the guilt of the appellant. Now coming to P.W. 2 i.e. Kalawati Devi (informant), it is submitted that her version, as narrated in her fardbeyan, is contradictory to her deposition, inasmuch as in her fardbeyan she has stated that she came to know about the death of her child in the morning, whereas in her deposition she has stated that in the night itself her child was killed by her husband, whereafter she had raised an alarm, however nobody had come. It is also submitted that as regards the allegation of poison and letters being given to the informant by her husband, there is no



evidence on record to suggest the same, apart from the fact that neither any poison has been produced nor any letters have been exhibited before the Ld. Trial court. It is also submitted that there is no proof on record to show that the child was illegitimate, hence there is lack of motive for committing the murder of the child, as far as the appellant is concerned. As far as the postmortem report is concerned, it is submitted that the same does not mention as to whether the injuries are antemortem or not, hence it cannot be ascertained that the injuries found on the dead body of the child had been inflicted prior to his death. Thus, it is submitted that the impugned judgment of conviction and order of sentence is perverse and requires interference.

8. *Per contra*, the learned APP for the State, Sri Ajay Mishra has submitted that the evidence of P.W.2 Kalawati Devi (informant) is sufficient to prove the guilt of the appellant and the ocular evidence stands corroborated by the medical evidence, inasmuch as the Doctor has opined that the cause of death is *asphyxia*. Thus, it is submitted that the impugned judgment of conviction and order of sentence requires no interference and the same may be upheld.

9. Besides hearing the learned counsel for the parties, we



have minutely perused both the evidence i.e. oral and documentary. Before proceeding further, it is necessary to discuss the evidence on record.

10. P.W.1 Laxman Sao is the father of the informant, Kalawati Devi and he has stated in his evidence that the marriage of his daughter, namely Kalawati Devi was performed with the son of Gambhira Sao, namely Sri Bhagwan Sao (appellant herein) about eight years back and after three years, *Duragaman/Gauna* (दुरागमन/गौना) was performed, whereupon the girl had gone to her in-laws' place and had stayed there for eight months and then he had brought her to his house. After few days, mother of the informant had told P.W.1 that P.W.2 Kalawati Devi is going to become a mother and after two months, the son-in-law of P.W.1 i.e. the appellant herein had come to his house to stay there for 2-4 days and after he had returned, his daughter told him that the appellant has given her one letter and bottle of poison and has told him that when the child is born, she should give two spoons of poison and then she should not disclose about the same to anyone. P.W.1 has also stated that her daughter had disclosed that the appellant had also taken her to a Doctor at Nauhatta for abortion, but since her daughter did not get ready to abort her fetus they had come back



and after 1-2 months, a child was born. P.W.1 has further stated that when the child had become two months old, the appellant and his brother had come to the house of P.W.1 and persuaded them to let her daughter go along with them but he had told them that before birth of the child, the appellant had given poison to her daughter to administer it to the child, hence under such circumstance he cannot let her daughter go along with them. P.W.1 has next stated that after the child became six months old, then his daughter's father-in-law, namely Gambhira Sao had come to his house and requested for allowing her daughter to go with them but again P.W.1 had told him that his son wanted to poison the son of his daughter, hence he should first make his son understand, whereafter Gambhira Sao had returned back.

11. P.W.1 has also stated that when the child became 19-20 months old, Gambhira Sao and his son i.e. the appellant herein had again come to the house of P.W.1 and had told them that mistake has been committed by them, hence they should be excused, whereafter P.W.1 told them that he would send her daughter along with them in the month of *Fagun*. After three months, Gambhira Sao and Sri Bhagwan Sao had again come to the house of P.W.1 in the month of *Fagun* and stayed there for



four days, whereafter they had taken the informant and the child along with them. P.W.1 has next stated that since he had doubt in his mind as to what type of behavior they would mete out to her daughter and the child, he had also left his house on Saturday at 3:00 pm and had reached the house of the in-laws of his daughter at Khudnu on Sunday, whereupon his daughter told him that in the night of Friday, Gambhira Sao, Laxmina Devi, Sri Bhagwan Sao (appellant) and Sri Ram had all conspired and thereafter, the appellant had pressed the neck of the child and killed him, whereafter at 4:00 am in the morning, they had buried the dead body. Thereafter, P.W.1 immediately returned but, on the way, he met Gambhira Sao, whereupon he had asked him about the incident, upon which he accepted that his son Sri Bhagwan Sao has killed the child. P.W.1 had then taken Gambhira Sao to the Sasaram Police Station where Gambhira Sao disclosed that the dead body of the child has been exhumed and taken away by Agrer Police Station personnel. Thereafter, P.W.1 had gone to Agrer Police Station while leaving Gambhira Sao at Sasaram Police Station, where he found the dead body of the child and then the police had sent the dead body along with the chaukidar for postmortem at Sasaram and he had also accompanied them. Thereafter, postmortem examination was



conducted and then the dead body was given to PW-1, whereafter he had buried the same near Takiya. P.W.1 had then gone to gram Khudnu on Monday morning and had taken her daughter back to his home.

12. In paragraph no. 8 of his cross-examination, P.W.1 has stated that the Officer-in-Charge had made enquiries from him, however he cannot say as to whether he had written his statement or not and four days prior to him giving the statement, his daughter had gone to Khudnu. P.W.1 has further stated that he had disclosed before the Officer-in-Charge that P.W.2 Kalawati Devi is his daughter. P.W.1 has also stated that at Agrer Thana, the chaukidar of Khudnu was also present but he does not know his name and he did not have any talk with him as also there was nobody at the police station, who could recognize him, as such he had himself given his introduction. At Sasaram Police Station, nobody from Khudnu was present and as far as Sasaram hospital is concerned, there also nobody could recognize PW-1. In paragraph no. 9 of his cross-examination, P.W.1 has stated that at the time of *Gauna* (गौना) of his daughter, his son-in-law was studying in matric or higher class and prior to *Gauna* (गौना), his son-in-law had not come to his place but



after *Gauna* (गौना) of his daughter, Gambhira Sao and his son-in-law had come to his house twice. Once the appellant's younger brother Sri Ram had also come and after two years of the *Gauna* (गौना), Gambhira Sao and his son-in-law had come to his house for the first time. P.W.1 has also stated in his cross-examination that he has got no proof of the fact that his daughter was taken by the appellant to Doctor for abortion. P.W.1 has stated he had not told anyone in his family about the factum of giving of poison by the appellant.

13. In paragraph no. 10 of his cross-examination, P.W.1 has stated that he cannot state any reason for giving poison to the child, however he has stated that his daughter told him that her husband wants wife and not child. In paragraph No. 11 of his cross-examination, P.W.1 has stated that he has got no proof that poison and letter were given. In paragraph No. 14 of his cross-examination, P.W.1 has stated that when he reached Khudnu then his daughter told him that the child has been murdered in the night at about 11:00-12:00 pm as also she told him that at the time the child was being killed, she was present there but because of fear she did not raise any alarm and in the morning at about 4:00-5:00 am, the accused persons had taken away the



dead body, whereafter she had started crying. In paragraph no. 16 of his cross-examination, P.W.1 has denied that the child had died on account of negligence.

14. P.W.2 Kalawati Devi is the informant of this case and she has stated that accused Gambhira Sao is her father-in-law, accused Sri Ram Sao is her brother-in-law and accused Laxmina Devi is her mother-in-law. P.W.2 has next stated that her marriage was solemnized eight years back with the accused Sri Bhagwan Sao (appellant) as per Hindu Rites and Rituals and after three years of marriage, *Gauna* (गौना) had taken place, whereafter she had stayed with her husband for seven months and during the said period, she had conceived a child. After seven months, PW-2 was taken by her father to her parental home and at that time, she was having a pregnancy of three months, a fact which she had disclosed to her husband at that time. PW-2 has stated that after she had come to her parental home, her husband had come there and had told her to abort the fetus and had taken her to Chuttia Hospital for the purposes of abortion but she had denied to get the fetus aborted and then she had come back to her parental home while her husband had left for his home. Thereafter, the husband of P.W.2 had again come to her parental home in the month of *Aghan* and at that time the



fetus was of seven months and he had handed over a bottle of poison and told her that when the child is born she should give two spoons of poison, a fact which she had disclosed to her mother and father, whereafter her father had reprimanded her husband leading to him returning back.

15. P.W.2 has further stated that she gave birth to a child in the month of *Chait* at Nauhatta Hospital. P.W.2 has stated that prior to birth of the child, the husband of P.W.2 used to regularly write letters in which he used to tell her to give poison to the child and she used to get the said letters read by her brother and sister-in-law. P.W.2 has also stated that her husband had written letters 5-6 times, which have been stolen by her in-laws. P.W.2 has stated that after giving birth to a son, her father-in-law had come to take her back but her father had told them about the appellant giving poison and writing letters to give poison to the child, whereafter the father-in-law of P.W.2, Gambhira Sao had returned back. After two months, brother-in-law and husband of P.W.2 had come and told that they would forcibly take P.W.2 to their home, whereupon the father of P.W.2 told them that he would not let her go in order to enable them to give poison to the child, whereafter they had returned back.

16. P.W.2 has also stated that when the child became one year



and eleven months old, then her husband and father-in-law had come to take her to her matrimonial home and then she had gone to her matrimonial home on Thursday and reached there in the afternoon. On the next day i.e. Friday, she had slept with her husband in the room along with her son in the night as also she had made her child drink milk in the night and made him sleep, whereafter she had gone to apply oil on the body of her mother-in-law. While going from the room *lantern* was burning, however when she returned back the *lantern* had been shut and when she asked her husband to give matchstick for lighting the *lantern*, he did not give it and asked her to sleep since it is sleeping time as also told her to sleep on the floor but she did not sleep on the floor and instead slept on the cot, on which her husband and son were present. After 10 minutes, husband of P.W.2 started pressing the neck of her son and killed him. P.W.2 became afraid that they would kill her, hence she did not raise any alarm. The father-in-law, mother-in-law and brother-in-law of P.W.2 came running just after pressing of the neck of the child by the appellant, upon hearing her crying and shouting and had then threatened her leading to her not raising any alarm on account of fear, whereafter they had taken the dead body of the child for burying it. In the morning of Saturday, police had come



and then she had given her statement, which was written and read over to her and then she had put her impression.

17. P.W.2 has also stated that the police had brought her to Sasaram where she had given her statement before the Court. In paragraph No. 12 of her cross-examination, P.W.2 has stated that at the time of her first departure from her matrimonial home, she had good relation with her husband and at the time of departure, she had talked with her husband and one day prior to leaving her matrimonial home she had slept lastly with her husband as also at that time she had told her husband that she was bearing a child in her womb. P.W.2 had also told her mother-in-law about her pregnancy. P.W.2 has also stated that her husband had told her in her matrimonial home to get abortion done. P.W.2 has further stated that after going to her paternal home the birth of child took place after six months. P.W.2 has also described the period during which her father-in-law, brother-in-law and husband had come to her parental home. P.W.2 has next stated that after going to her in-laws' place she had not applied oil on the body of her mother-in-law in the night of Thursday and in the night, her husband had slept with her along with the child, whereafter in the morning, her husband had woken up and gone somewhere.



18. In paragraph no. 16 of her cross-examination, P.W.2 has stated that in the night of Friday, after having dinner she had gone to apply oil on the body of her mother-in-law and had done so for one hour, whereafter she had returned back to her room and at that time all had eaten food, whereupon her father-in-law and brother-in-law had gone in the *Dalan (Baranda)* to sleep. In paragraph no. 16 (repeated paragraph no. 16) of her cross-examination, P.W.2 has stated that when his son was being killed, she had raised alarm for one minute but nobody from the neighborhood had come there. In paragraph no. 17 of her cross-examination, P.W.2 has stated that after her son was killed, his dead body was taken in the morning for the purposes of being buried and at that time the villagers had woken up and had come but she does not recognize them. In paragraph no. 18 of her cross-examination, P.W.2 has stated that she had given her statement before the Officer-in-Charge to the effect that the child was sleeping in between the cot and on account of being tired she had also slept on the cot along with her husband and child and in the morning her husband had woken her up and told her that the child is sleeping, hence she should complete her work, whereafter she had told him that she would first make the child drink and then she would do the work since the child has



not drunk anything for the whole night, whereafter her husband had gone out of the room.

19. At this juncture, P.W.2 had voluntarily stated that the aforesaid statement was given by her before the Officer-in-Charge on account of fear of being killed. In paragraph no. 19 of her cross-examination, P.W.2 has stated that she does not know the name of the Doctor at Chuttia and she has no document pertaining to the said Doctor as also the bottle of poison is at her home. In paragraph no. 21 of her cross-examination, P.W.2 has stated that her husband hated her child and the reason for his hatred is that since her husband was studying, his friends used to laugh that he has become a father. In paragraph no. 23 of her cross-examination, P.W.2 has stated that it is not a fact that the child was weak, hence he died in a natural way on account of negligence. She has also stated that it is not a fact that the child died on the cot on account of being pressed (*dabakar*) by her and her husband and that she has given a false statement.

20. P.W.3 Shrawan Pawan is the chaukidar of the village and he has stated in his deposition that he came to know three years back that the grandson of Gambhira Sao has died, whereafter he had informed the police, however he had not given any statement before the police. This witness has been declared



hostile by the prosecution. Nonetheless, he has stated in his cross-examination that while he was coming to the village from Sumbha, at Rudna village, Muslim people were talking that some casualty has taken place at Khudnu village, whereafter he had gone to Khudnu village but he did not ascertain as to what type of accident has taken place, however upon being told by witness Sudarshan Singh, he had gone to give information at the police station.

21. P.W.4 Vijay Yadav is also a chaukidar and he has stated in his evidence that the Officer-in-Charge had recovered the dead body of the child from a place situated towards the south of Khudnu village, which was buried and the dead body belongs to the son of Gambhira Sao. In cross-examination, P.W.4 has stated that his statement was not recorded by the Officer-in-Charge. He has also stated that though he had not recognized the child but he had stated about the child being grandson of Gambhira Sao on having heard about the same.

22. P.W.5 Sudarshan Singh is also a co-villager and he has stated that in his presence the Officer-in-Charge of Agrer Police Station had recorded the statement of P.W.2 Kalawati Devi, who had put her thumb impression in his presence and he had also put his signature which he has identified and the same has been



marked as Exhibit-1. In paragraph no. 2, P.W.5 Sudarshan Singh has stated that he does not know as to how the son of Bhagwan Sao, aged about 1-1½ years had died and that his statement was not recorded by the police. This witness has also been declared hostile. Nonetheless, in his cross-examination, he has stated that it is not a fact that he had given his statement before the police to the effect that he had heard *hulla* in the village that the elder son of Gambhira Sao has killed his son and has fled away. He has also stated that he had told the Officer-in-Charge about the place where the child was buried. In cross-examination, P.W.5 has also stated that he had not heard what had been stated by P.W.2 Kalawati Devi in her statement.

23. P.W.6 Sindheshwar Pandey is the Investigating Officer of the present case and he has stated in his evidence that on 27.02.1988 at about 3:00 pm in the afternoon, he had recorded the fardbeyan of P.W. 2 Kalawati Devi at Khudnu, which is in his writing and bears his signature and the same has been marked as Exhibit-2. P.W.6 had also recorded the restatement of P.W.2 Kalawati Devi and then he had reached Murdghati, situated at a distance of 200 yards south of the village where he had recovered the dead body of the deceased in presence of Nagdev Singh and Rajendra Singh with the help of Moti Dom,



whereafter inquest report was prepared over which Nagdev Singh and Rajendra Singh had put their signature as witness. P.W.6 has identified the inquest report, which has been marked as Exhibit-3. Thereafter, the dead body was sent for postmortem examination. P.W. 6 has next stated that he had then recorded the statement of witnesses, i.e. P.W.5 Sudarshan Singh, P.W.3 Shrawan Paswan, P.W. 4 Vijay Yadav, Nagdev Singh and P.W.1 Laxman Sao. In paragraph no. 4 of his examination-in-chief, P.W. 6 has stated that chaukidar Shrawan Paswan (P.W.3) had stated in his statement made before him that after he heard about the killing of little son by Bhagwan Sao, he had gone to village Khudnu from where he came to know about the incident. In paragraph no. 5 of his examination-in-chief, P.W. 6 has stated that witness Sudarshan Singh (P.W.5) has stated before him that he had heard *hulla* in the village that son of Gambhira Sao has killed his son and fled away. In paragraph no. 6 of his examination-in-chief, P.W. 6 has stated that P.W. 4 Vijay Yadav had stated in his statement made before him that at village Jigni he came to know that a child has been killed, whereafter he came to village Khudnu and there he came to know that Bhagwan Sao has killed his son and buried him at Murdghati.

24. In paragraph no. 7 of his examination-in-chief, P.W. 6 has



stated that the place of occurrence of the present case is house of Gambhira Sao at village Khudnu. He has also stated that the father of the informant Kalawati Devi (P.W.2) had given him photocopies of four letters. He had submitted charge-sheet after completing the investigation of the present case. In cross-examination, P.W. 6 has stated in paragraph no. 10 that *sanha* was recorded on the statement of P.W.3 Shrawan Kumar, whereafter he had left the police station and had then reached the place of occurrence but he did not find anybody at the house and at that time P.W.3 Shrawan Kumar was along with him as also P.W.4 Vijay Yadav, chaukidar and Nagdev Singh had arrived there at that time. He has also stated that at the time when he was recording the statement of Kalawati Devi, P.W.5 Sudarshan Singh was present there and there he had also recorded the statement of P.W.5 Sudarshan Singh. In paragraph no. 12 of his cross-examination, P.W. 6 has stated that P.W. 5 Sudarshan Singh had told him that the dead body has been buried on the southern side of the village and when he went there, he saw birds flying all over. He has also stated that the land situated adjacent to Murdghati is vacant and no house is situated there. P.W. 6 has also described the boundaries of the place of occurrence.



25. In paragraph no. 15 of his cross-examination, P.W. 6 has stated that he has written in paragraph no. 15 of the case diary that the place of occurrence of the present case is situated towards the south-eastern corner of village Khudnu and has also described therein the topography of the house of Gambhira Sao. He has also stated that he had come to know that the child was killed in the room situated towards the south of the eastern side of the courtyard and the dead body of the deceased was buried at a distance of 200 yards towards the south. P.W. 6 has also described the boundaries of the place from where the dead body was recovered. He has also stated that he had recorded the statement of Nagdev and Rajendra Singh. In paragraph 18 of his cross-examination, P.W. 6 has stated that he did not know Laxman (P.W.1) from before but he had recorded his statement on 29.02.1988 and he had given him four letters, however the originals were not given. In paragraph no. 14 of his cross-examination, P.W. 6 has mentioned the boundaries of the place of occurrence as follows:-

“East- cowshed of the accused

West- house of Ramashish Lohar

North- empty land of the informant

South- house of Sri Kisun Mistri”



In paragraph no. 15 of his cross-examination, P.W. 6 has depicted the boundaries of the place from where the dead body was recovered as follows:-

“East- cowshed of Gambhira Sao

West- House of Ramashish Lohar

North- empty land in front of the house of the informant

South- house of Sri Kisun Mistri”

26. P.W.7 Dr. Naresh Prasad Rai has stated in his evidence that he was posted at Sadar Hospital, Sasaram on 28.02.1988 and had conducted the postmortem examination of the dead body of Raju, a male boy aged about two years, son of Bhagwan Sao at 11:30 am. He has stated that the body was brought and identified by constable and chaukidar Shrawan Paswan (P.W.3). He has further stated that the body was lean and thin and dehydrated. Rigor mortis was absent in all limbs with initial feature of decomposition. P.W.-7 has found the following injuries on the person of the deceased:-

“(i). Abrasion $\frac{1}{2}$ ” x $\frac{1}{4}$ ” with slight reddened area around the abrasion at right side of neck.

(ii). Excoriation of Epithelium of skin and slight swelling diffuse in nature at left side of neck.

(iii). Bruise $1\frac{1}{2}$ ” x 1” at right side of chest.

(iv). Excoriation of Epithelium at upper lip around



nostril with abrasion of mucus membrane at inner side of upper limb.

On dissection-there was ecchymosis of subcutaneous tissue and mucus membrane of larynx found congested. Lungs were found congested at places and air cells at places found distended. On cutting there was frothy mucus found coming out.”

27. P.W.7 Dr. Naresh Prasad Rai has stated that the cause of death is asphyxia resulting from suffocation caused by obstruction to air passage due to mechanical pressure on larynx and forcible closure of mouth and nostril. He has stated that the injury was sufficient to cause death in normal course of nature and was grievous. P.W.7 has stated that the time elapsed since death is one-three days. P.W.7 has further stated that the postmortem report is in his writing and bears his signature, which he has identified and the same has been marked as Exhibit-4. In paragraph no. 6 of his cross-examination, P.W.7 has stated that there may be suffocation due to pressure with another person by sleeping. He has volunteered that this type of injury, as aforesaid is not possible by such pressure and the mechanical pressure may include many things. In paragraph No. 7 of his cross-examination, P.W.7 has stated that the pressure by persons sleeping together is improbable and dehydration may also be a cause of death.



28. After closing the prosecution evidence, the learned Trial Court had recorded the statement of the appellant on 02.03.1993 under Section 313 of the Cr.P.C. for enabling him to personally explain the circumstances appearing in the evidence against him, however he claimed to be innocent.

29. The learned trial Court, upon appreciation, analyzing and scrutiny of the evidence adduced at the trial, has found the aforesaid appellant guilty of the offences and has sentenced him to imprisonment and fine, as stated above, by the impugned judgment and order.

30. We have perused the impugned judgment of the learned Trial Court, the materials on record as also the evidence on record and have given a thoughtful consideration to the rival submissions made by the Ld. counsel for the appellant and the Ld. APP for the State.

31. We find from the evidence led by the prosecution that contradictory statements have been made by the prosecution witnesses and there are inconsistencies in the fardbeyan and the evidence of the prosecution witnesses. As far as P.W.3 Shrawan Paswan, P.W. 4 Vijay Yadav and P.W.5 Sudarshan Singh are concerned, they are chaukidar and co-villager and out of them P.W.3 Sharwan Paswan and P.W.5 Sudarshan Singh have been



declared hostile, while P.W. 4 Vijay Yadav has not stated anything substantial regarding the guilt of the appellant. As far as P.W.1 Laxman Sao, father of the informant, is concerned, he is a hearsay witness and he has stated in his evidence mainly about the events which had unfolded right from the marriage of his daughter with the appellant, her *Gauna* (गौना), his daughter giving birth to a male child etc. We find from the evidence of P.W.1 that he has stated in para no. 6 of his deposition that when he was returning from Khudnu village after meeting her daughter, he met the father of the appellant on the way, who accepted that his son has killed the son of Kalawati Devi, whereafter P.W.1 had taken Gambhira Sao to Sasaram Police Station where he came to know that the dead body of the child has been exhumed and was kept at Agrer Police Station, whereupon he had gone to Agrer Police Station from where the dead body was sent for postmortem examination and after the postmortem was conducted, dead body was handed over to P.W.1, which he had buried near Takiya. We find that it is intriguing as to how and why Gambhira Sao had accompanied P.W.1 to the police Station, in case he was a suspect in the killing of the child inasmuch as his son is stated to have killed the child, a conduct which does not seem to be natural and probable.



32. We also find that P.W.1 Laxman Sao, in paragraph no. 10 of his deposition, has stated that there is no motive for giving poison to the child and in paragraph no. 14 of his cross-examination, P.W.1 has stated that when he reached Khudnu, his daughter told him that at about 11:00-12:00 pm in the night the child has been killed and at the time of killing of the child she was present on the spot but she had not raised any *hulla* (alarm) on account of fear and in the morning at 4:00-5:00 am, the accused persons had taken away the dead body, whereafter she had cried but on the contrary we find from the fardbeyan of the daughter of P.W.1, namely Kalawati Devi that she had not witnessed the actual occurrence and she had come to know about the death of the child only in the morning, however she did not disclose about having seen any injury on the dead body of the child. Similarly, we find from the evidence of P.W.2 Kalawati Devi that the mode and manner of occurrence, as stated by her in her evidence is absolutely at variance with what has been stated by her in her fardbeyan, inasmuch as in the fardbeyan it has been stated by the informant that in the night she had gone to sleep along with her child and husband on a cot and in the morning her husband had woken her up and asked her to go and perform household work, however she had told him



that since the child had not drunk anything during the entire night, she would first make him drink something and then go for doing work and then she had lifted her child and found the child to be dead, however in paragraph no. 8 of her deposition, P.W.2 Kalawati Devi has stated that in the night, after eating dinner she had gone to apply oil on the body of her mother-in-law and when she came back in her room, she found that the *lantern* was not burning, hence she had asked for matchstick from her husband, but he told her that it is sleeping time, thus she should sleep and told her to sleep on the floor, but she did not sleep on the floor and slept on the cot along with her son and husband and after ten minutes her husband started pressing the neck of his son with a view to kill him and then finally killed him, however she did not raise any alarm on account of fear that they would kill her. P.W.2 Kalawati Devi has also stated that when she started crying and shouting, her father-in-law, mother-in-law and brother-in-law came there and threatened her leading to her not raising any alarm. In para no. 16 (repeated paragraph no. 16) of her cross-examination, P.W.2 Kalawati Devi has merely stated that she had returned back to her room after applying oil on the body of her mother-in-law for one hour and when her son was being killed, she had raised alarm but nobody came.



33. We further find that P.W.2 Kalawati Devi has stated in paragraph no. 17 of her cross-examination, that when the dead body of her son was being taken for burial, the villagers had arrived there. In paragraph no. 18 of her cross-examination, P.W.2 Kalawati Devi has stated that on account of fear she had given wrong statement to the Officer-in-Charge to the effect that she had slept in the night with her child and husband and in the morning, she was woken up by her husband and told to go for doing the household work but she had told him that she would first make her child drink and then go for doing the work. In paragraph no. 21, the motive stated by P.W.2 is also unusual, inasmuch as she has stated that her husband used to hate her child on account of the fact that her husband was studying and his friends used to make fun of him that he is having a child. A bare perusal of the fardbeyan of the informant, deposition of P.W. 1 Laxman Sao and P.W.2 Kalawati Devi, as aforesaid, would show that grave contradictions and inconsistencies are present in these statements, which makes their testimony untrustworthy. Thus, we find that ocular evidence is not unimpeachable much less credible, as such the prosecution has failed to prove beyond all reasonable doubt the commission of the offence by the appellant. Now in case of absence of ocular



evidence, we will have to examine as to whether any circumstantial evidence is available in the present case or not. It is a well-settled law that circumstantial evidence is required to be drawn from the established facts since the circumstances lead to a particular inference and the Court has to draw an inference with respect to whether the chain of circumstances is complete and when the circumstances are considered collectively, whether the same would only lead to the irresistible conclusion that the accused are only the perpetrators of the crime in question. All the circumstances so established must be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused person. Now coming back to the present case, we find dearth of circumstantial evidence and the chain is also incomplete which would go to prove the guilt of the appellant.

34. We also find that the investigation made in the present case by the police and the Investigating Officer has been perfunctory and also involves depiction of wrong facts including suppression of actual material facts, which would be apparent from paragraphs no. 14 and 15 of the cross-examination of P.W.6 Sidheshwar Pandey wherein he has described the boundaries of the place of occurrence and the place from where the dead body was recovered to be the same but the records



would bear it out that the dead body was recovered from a place far away from the place of occurrence. Thus, we find that the investigation by the police in the present case has been absolutely perfunctory, therefore considering the well-settled law to the effect that in case of perfunctory investigation, if the Court finds that the foundation of the prosecution case is false and does not confirm to the 'doctrine of fairness' then the very case of the prosecution falls to the ground, we are of the view that on this score as well, the case of the prosecution has failed.

35. Thus, taking into account an overall perspective of the entire case, emerging out of the totality of the facts and circumstances, as indicated hereinabove, and having perused the entire evidence on record as also for the foregoing reasons, we find that the prosecution has failed to prove beyond all reasonable doubt the commission of the offence by the appellant. Therefore, we find that the learned Trial Judge has committed a gross error in holding that the evidence adduced by the prosecution definitely proves the offence under Section 302 of the IPC against the appellant herein.

36. Therefore, in the facts and circumstances as discussed above and for the reasons stated herein above in the preceding paragraphs, we are of the view that there are compelling reasons



in the present case which necessitates that the appellant of the aforesaid appeal be given the benefit of doubt.

37. Accordingly, we find that the finding of conviction recorded by the Ld. Trial Court, in our opinion is not sustainable and requires interference. Therefore, the impugned judgment of conviction dated 04.09.1995 and order of sentence dated 07.09.1995, passed by the learned Court of 7th Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 418/89 (arising out of Sasaram (Agrer) P.S. Case No. 94/88) are set aside. The appellant of the aforesaid appeal is acquitted of the charge levelled against him.

38. The appellant herein being on bail is discharged from the liability of his bail bonds.

39. Accordingly, the aforesaid appeal, i.e. Criminal Appeal (DB) No.314 of 1995 stands allowed.

(Mohit Kumar Shah, J)

(Ashok Kumar Pandey, J)

Ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
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