

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.962 of 2024**

Arising Out of PS. Case No.-32 Year-2021 Thana- CHANDI District- Nalanda

Lalti Devi, aged about 66 years, Female, Wife of Chandrashekhar Prasad,
Resident Of Village - Jamalpur, Police Station - Tharthari, District - Nalanda
... .. Appellant

Versus

1. The State of Bihar
2. Sudhir Prasad @ Ramkrishna Kumar, aged about 50 years, (male), Son Of
Late Dularchand Mahto, Resident Of Village - Amraura, Police Station-
Chandi, District - Nalanda
... .. Respondents

Appearance:

For the Appellant/s	:	Mr. Ajay Mukherjee, Advocate
For the State	:	Mr. Parmeshwar Mehta, APP
For the Respondent/s	:	Mr. Shyamal Prakash, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)**

Date: 24-02-2025

Heard Mr. Ajay Mukherjee, learned counsel for
the appellant, Mr. Shyamal Prakash, learned counsel for the
respondent and Mr. Parmeshwar Mehta, learned APP for the
State.

2. The present appeal has been filed against the
judgment and order of acquittal dated 23.02.2024 passed by
learned Additional Sessions Judge-I, Hilsa (Nalanda) in
Sessions Trial No. 441 of 2021/Reg. No. 137 of 2021 arising
out of Chandi P.S. case No. 32 of 2021 whereby and where-
under the learned trial Court acquitted the respondent no. 2



from charges under Sections 302/120 (B) Indian Penal Code (hereinafter referred as 'IPC'). The appellant is the informant and PW- 5 of this case.

Prosecution Case

3. That the prosecution case in short is that an F.I.R. was lodged on the basis of written report of the informant namely Lalti Devi (PW-5). It was alleged by the informant in the F.I.R. that her daughter, Chanchal Kumari (deceased) was married to one Sudhir Prasad (Respondent no. 2) about 19 years ago from date of occurrence. She further alleged that her daughter along with her husband and mother-in-law Shyamsundari Devi used to reside in a rented premise in Chandi. Right from the beginning, Sudhir Prasad did not treat her as his wife and he along with deceased's sister-in-law Anju Devi and Anju Devi's mother Rajkumari Devi @ Rajjo Devi used to misbehave with the informant's daughter. Despite several confrontations they used to misbehave and torture her. The informant further alleged that Sudhir Prasad had an illicit relationship with his sister-in-law Anju Devi and this was protested by the deceased. It was further alleged that on 21.01.2021 around 5 o' clock in the morning, the informant got information that her daughter was killed by her in-laws. The



informant went there and found her daughter, Chanchal Kumari's dead body lying over bed with severe injuries over face and blood oozing out from her mouth. Chanchal used to keep her sister's four years old daughter with her but the child was not found at the place of occurrence. The informant suspected involvement of Sudhir Prasad, Anju Devi and Rajkumari Devi in causing death of Chanchal Kumari by strangulation and named them in the FIR.

4. On the basis of above written statement of the informant (PW-5) Chandi P. S. case No. 32 of 2021 was registered under Sections 302/120(B) of the Indian Penal Code and after investigation the Investigating Officer submitted the charge-sheet against accused/respondent no. 2 and others on 10.04.2021 under Sections 302/120(B) of Indian Penal Code. The Additional Judicial Magistrate-I took cognizance of the case on 17.06.2021 and thereafter the case was committed to the court of Sessions for trial.

Analysis of Prosecution Witnesses:

5. On behalf of the prosecution, altogether seven witnesses were examined and several documents were exhibited during the course of trial. The statement of the accused has been recorded under Section 313 of the Cr.P.C in which they have



denied the allegations raised against them and put up a defence of innocence. The list of the prosecution witnesses as well as the documents exhibited on behalf of the prosecution are being shown here-under in a tabular form:-

List of Prosecution Witnesses:

PW-1	Sarvesh Kumar
PW-2	Suman Kumari
PW-3	Mahajani Devi
PW-4	Pankaj Kumar
PW-5	Lalti Devi
PW-6	Chandra Uday Prakash
PW-7	Sanjiv Kumar

List of Exhibits by Prosecution

Exhibit-1	FIR
Exhibit-2	Signature of the informant
Exhibit-3	Sections mentioned in the written application
Exhibit-4	Formal FIR
Exhibit-5	Charge-sheet
Exhibit-7	Postmortem report

6. PW-1 Sarvesh Kumar, brother of the deceased in his examination-in-chief has stated that his sister and respondent no. 2 Sudhir Kumar did not have good relations. Sudhir Kumar had an illicit relationship with his sister-in-law, Anju Devi. He further stated that respondent no. 2 used to beat



his deceased sister and that his sister had reported the same in the Mahila Thana.

7. PW-2 Suman Kumari is the owner of the house where the deceased and the accused-respondent used to live in Chandi. However, she has been declared hostile by the prosecution. Similarly, PW-3 and PW-4 have stated that they did not have any information about the alleged occurrence and were thus declared hostile.

8. PW-5 Lalti Devi is the informant in the present case. She is the mother of the deceased woman Chanchal Kumari. In her examination-in-chief she stated that the occurrence took place on 21.01.2021. When she reached her daughter's home in Chandi village she saw her lying dead and she had injuries on her face and there was blood oozing out of her mouth. She further alleged that her daughter was killed by her husband Sudhir Kumar (respondent no. 2), Anju Devi, who was her daughter's sister-in-law and Rajkumari Devi @ Rajjo Devi, who was Anju Devi's mother. They used to regularly assault her. The informant further stated that respondent no. 2 Sudhir Kumar had an illicit relationship with his sister-in-law Anju Devi and this was protested by her daughter and hence he used to physically assault her. PW-5 stated that her daughter



used to inform her about this on the phone. She further stated that the deceased did not have a child of her own but she used to stay with her niece Suhana. PW-5 stated that on the day of occurrence Suhana was there in the house but the accused-respondent had thrown her out of the house.

8.i. In Para-7 of her cross-examination, PW-5 has stated that she does not remember the date and time of the alleged occurrence. She further stated that she got the information of her daughter's death from one Arvind Prasad who used to live in her village. In Para-9 she stated that Arvind Prasad was not made a witness in the instant case. Arvind Prasad got the information of Chanchal Kumari's death from his relatives who used to live in Chandi village.

8.ii. In Para-10 of her cross-examination, she stated that when she reached her daughter's home, the police were already there and she did not know who informed the police about the occurrence. The police had got the information verbally. In Para-12 she stated that the police took her thumb impression on a blank page and in Para-17 she further stated that her daughter did not commit suicide but rather her death was homicidal.

9. PW-6 is Chandrauday Prakash who was the



Investigating Officer in the instant case. He stated in his examination-in-chief that on 21.01.2021 he was posted as Sub Inspector at Chandi P. S. and on that day the informant gave a written application alleging the murder of her daughter and on the basis of this written application, an FIR was registered. He further stated that the inquest report of the deceased was prepared by Shyamsundari Devi, Sub Inspector Chandi. In Para-5 of his examination-in-chief he stated that he arrested the accused person namely Sudhir Kumar who was present at the place of occurrence. He further stated that he investigated the place of occurrence on the date of occurrence itself. The dead body of the deceased was found on a bed at the second floor of her house where she used to live with her husband and mother-in-law. The house was situated at a distance of 500m east from the Chandi P. S. The house belonged to one Surendra Prasad. In Para-15 of his examination-in-chief he stated that the postmortem report of the deceased was noted in the case diary on 07.02.2021. In Para-17 he stated that the Sub-Divisional Police Officer, Hilsa believed the alleged occurrence to be true and in Para-19 he stated that the Superintendent of the Police, Nalanda also believed that the incident was true.

9.i. In Para-26 of his cross-examination he stated



that a clear postmortem report was not received by the police. In Para-27 he stated that they did not find any marks of violence at the place of occurrence and the bed where the dead body was found was not in an unkempt condition. In Para-31 he stated that he did not record the statement of any eye-witness in the instant case. He further stated that he did not record the statement of any person who lived nearby the deceased and accused and he did not record the reasons for omitting to do so. In Para-33 he further stated that he did not investigate about the cause of the occurrence. He did not investigate on the allegation of the informant that the accused used to physically assault the deceased. In Para-35 he further stated that the deceased used to live with her niece but the police did not record the statement of the niece and he did not record the reasons for not doing so. In Para-37 he stated that he did not submit the *viscera* report and that he could not say what was the cause of the death.

10. PW-7 Sanjeev Kumar is the Medical Officer in the instant case. He stated in his examination-in-chief that on 21.01.2021 he was posted as Medical Officer at the Sadar Hospital, Biharsharif. On that day he along with one Dr. Mahendra Kumar did the examination of the dead body of Chanchal Kumari. The examination revealed as follows:



External examination- Liquefied bloody discharge from mouth and nose. Bruise mark below right lower eye lid and over lateral aspect of left eye blow.

On Dissection- Head- skull bone intact. Brain congested.

Neck- NAD.

Thorax- Ribs- Intact, Lungs- Intact and congested.

Heart- Both chamber full with blood.

Abdomen- Stomach- Digested food material present. Other viscera organs are intact and congested.

U. Bladder – Empty.

Uterus – Small.

Viscera was preserved and opinion reserved till chemical report from FSL Patna available. Time elapsed since death within 06 to 36 hours.

This Postmortem. report has typed by Data Entry Operator Aatish Kumar on dictation of Dr. Mahendra Kumar and me. The Signature of Mahendra Kumar and me is on Postmortem report.

10.i. In Para-2 of his cross-examination he stated that he did not give a clear opinion as to whether the death of Chanchal Kumari was homicidal or suicidal. He further stated that he did not get any findings with respect to the *viscera* report. In Para-6 he stated that during the postmortem there was no tape-recording of the findings.



Findings of the Trial Court:

11. The learned trial Court after analyzing the evidences on the record found that out of the seven witnesses none of them were an eye-witness to the alleged occurrence. Further, PW-2, PW-3 and PW- 4 have been declared hostile by the prosecution as they stated that they denied having any information about the alleged occurrence. PW-1 Sarvesh Kumar supported the incident in his examination-in-chief but in cross-examination he said that he did not see the incident taking place. PW-2 Suman Kumari is also not an eye witness of the incident, because Shyamsundari Devi came to her to tell her that Chanchal Kumari has died. Similarly, PW-4 Pankaj Kumar stated that he came to know on the next day of the incident that Chanchal Kumari is dead. PW-5 Lalti Devi, who is herself the complainant in this case, has supported the incident in her sworn statement. She stated that on reaching the place of occurrence she saw her daughter was lying dead but she was not an eye-witness to the alleged occurrence.

11.i. She further stated that she filed the case on the basis of suspicion. Thus, based on the statements of the prosecution witnesses, the allegations leveled against the accused seemed doubtful. No eyewitness has been testified in



the entire investigation. No investigation or reason has been written on the point of the cause of murder. Thus, the cause of death has not been clear even from the evidence of this witness.

11.ii. The trial Court further held that PW-7 who was the medical officer also did not give any clear opinion on whether the death of the deceased Chanchal Kumari was homicidal or suicidal. He did not say in his evidence how the deceased died. Thus, it is not clear from the evidence of all these witnesses presented by the prosecution that the deceased died 19 years after her marriage and how she died is not known till date. The evidence of these witnesses could not prove the place of incident, time of incident and cause of incident. Therefore, from the available evidence the trial Court found the case to be true but the involvement of the accused person in this case appeared doubtful, since the prosecution failed to prove the allegations leveled against the accused person beyond all reasonable doubts and on the basis of available evidence on record, it appeared appropriate and just to give the benefit of doubts to the accused and acquit him from the charges leveled against him.

Submissions on behalf of the Appellant:

12. The Learned counsel for the appellant has assailed the impugned judgment saying that the judgment is



based on mere conjectures and surmises and is against the materials available on the record. Learned trial Court failed to consider and appreciate the prosecution witnesses who have fully supported the prosecution case. The evidence on record does not support the finding arrived at.

12.i. Learned counsel for the appellant further submitted that viscera of the deceased was sent to the Forensic Science Laboratory (referred to as 'FSL') and FSL report had been received, but the trial Court delivered its judgment without considering the FSL report. He further submitted that the trial Court did not carefully examine the statements of the ocular witnesses who saw the injured face of the deceased and the bruise marks on the accused-respondent's face. The learned counsel further submitted that some indispensable witnesses were not brought on record by the police and neither did the trial Court summon them. Dr. Mahendra Prasad who was a member of the medical board who has prepared the postmortem report and Dr. Anil Kumar who prepared the injury investigation report of the accused/respondent no. 2 were not summoned by the trial Court.

12.ii. The learned counsel further submitted that in the absence of eye-witnesses to the alleged occurrence, these



witnesses could have explained the cause of death of the deceased. He further submitted that the occurrence took place on 21.01.2021 and the FIR was registered on the same day. As per Para-3 of the case diary, the police noted that when they reached at the place of occurrence they found the deceased lying dead on the bed and there were injury marks on her face. The accused-respondent tried to hide the body of the deceased and the police apprehended him on the place of occurrence itself. Despite this the trial Court did not carefully examine any witnesses in order to ascertain the true chain of circumstances which led to the death of the deceased.

12.iii. Learned counsel further submitted that the trial Court did not ask the accused any questions with respect to the wounds on his face. PW-2 and PW-3 were neighbors of the deceased and they had seen the accused-respondent next to the deceased's dead body. He further submitted that in their statement to the police they described that the marks on the accused/respondent's face seemed like scratches caused by finger nails. They also stated before the police that there were several injuries on the face of the deceased.

12.iv. Learned counsel next submitted that the trial Court did not draw the attention of PW-6, the I.O. in the



present case to Para-11, 23 and 24 of the case diary which consists of the previous statements of PW-2 and PW-3 where they described the place of occurrence right after the alleged occurrence took place. However, on perusal of the statement of the I.O. recorded by the trial Court we find that the trial Court failed to take note of the previous statements made by the PW-2 and PW-3. The counsel further submitted that the judgment of the learned trial Court acquitting respondent no. 2 of the charges is bad and vitiated by grave illegality which has resulted in gross miscarriage of justice for the appellant. The trial Court failed to apply its judicial mind and the judgment was passed in a mechanical manner and the same is liable to be interfered with.

12.v. It is submitted that the death had taken place within the four corners of the house of the appellant, it is not his case that he was not residing in the said house with the deceased, in such circumstances Section 106 of the Indian Evidence Act (now Section 109 Bhartiya Sakshya Adhiniyam 2023) would be attracted.

Submissions on behalf of the Respondent and State:

13. The learned counsel for respondent no. 2 has



vehemently opposed the petition of appeal. He has submitted that the investigating officer and the medical officer could not ascertain the cause of death of the deceased. There are no eye witnesses of the alleged occurrence. He next submits that there is no evidence that points towards the guilt of the accused/respondent no.2. The trial Court rightly acquitted the accused respondent no.2 by giving him the benefit of doubt.

13.i. The learned APP for the State contended that remanding the matter back to the learned Trial Court for *de novo* trial would not be in the interest of justice. He next submits that the trial Court has rightly acquitted the respondent no. 2 as the prosecution has failed to prove their case beyond all reasonable doubts, so it would not be a fit case to interfere in the findings of the trial Court.

Consideration:

14. We have considered the submissions made by learned counsels appearing for the parties, perused the judgment impugned in the present appeal and re-appreciated the evidence on record in the light of grounds taken in the present appeal preferred against the verdict of acquittal passed by learned trial Court. The accused-respondent is the husband of the deceased. Chanchal Kumari, the daughter of informant had died an



unfortunate death after 18-20 years of her marriage with respondent no. 2 Sudhir Kumar. This is admitted fact that deceased and respondent No.2 Sudhir Kumar were married.

15. The prosecution side produced PW-1 Sarvesh Kumar, who is the brother of the deceased, PW-2 Suman Kumari is the owner of the house in which the deceased and the accused lived in Chandi. PW-2, 3 and 4 turned hostile as they denied having any information about the alleged occurrence. PW-5 is the informant and mother of the deceased who had named the accused/respondent in the FIR. PW-6 is the I.O. in the present case and PW-7 is the Medical Officer who was a member of the medical board which conducted postmortem examination on dead body of the deceased on 21.01.2021. He conducted the postmortem examination along with Dr. Mahendra Kumar and the postmortem report bears the signatures of both the doctors. The postmortem report is marked as Ext. 7.

16. Exhibit-7 which is the postmortem report clearly states that there were bruise marks below the right lower eye lid and on the lateral aspect of the left eyebrow, but PW-7, the medical officer failed to explain the injuries and instead said that the cause of death could not be ascertained. It is also seen



that since the cause of death could not be ascertained by the medical officer, the viscera was preserved till the FSL report was obtained.

17. The FSL report dated 29.12.2021 was not exhibited for examination even when the report was available with the prosecution. It is also observed that the trial Court failed to summon Dr. Mahendra Prasad who was a part of the medical board which conducted the postmortem of the deceased. He was a material witness who could have given some information on the cause of death of the deceased.

18. The trial Court appears to have committed serious fallacies in the examination of prosecution witnesses. The I.O. had found during the investigation that the accused-respondent had injuries on his face and for this an injury investigation report was submitted by the Primary Health Centre, Chandi. The report highlighted the following:

- 1. Abrasion of 1/2" x 1/8" on his left side cheek*
- 2. Abrasions of 1/2" x 1/8" on his left side cheek*
- 3. Abrasion of 1/4" x 1/8" on his left side cheek.*



4. A lacerated wound 1/4" x 1/8" skin deep on left right finger.

Nature of injury- Simple

Weapons used-Hard & Blunt substance

19. However, the trial Court did not examine Dr. Anil Kumar, the doctor who prepared this injury report and neither did the trial Court ask the accused any questions with respect to these wounds. Also, the trial Court did not undertake any process or step to procure the presence of Dr. Anil Kumar, the doctor who prepared the injury report. PW-2 and PW-3 were neighbors of the deceased and they had seen the accused-respondent next to the deceased's dead body. In their statement to the police they described that the marks on the accused/respondent's face seemed like scratches caused by finger nails. They also stated before the police that there were several injuries on the face of the deceased. While PW-2 and PW-3 were declared hostile by the prosecution, we are surprised that the prosecution/trial Court did not draw the attention of PW-2 and PW-3 towards their previous statements made before the police which were recorded in Para 11, 23 and 24 of the case diary and then the writings in the case diary could not be used to contradict these witnesses through the I.O. where they described the place of occurrence right after the alleged occurrence took



place.

20. Since, in the present case there is no eye-witnesses, the statements of these witnesses as to circumstances prevailing right after the occurrence are relevant under Section 7 of the Indian Evidence Act in order to prove the prosecution case. However, on perusal of the statement of the I.O. recorded by the trial Court we find that the trial Court was not vigilant to take note of the previous statements made by the PW-2 and PW-3.

21. We further note that on questioning by the trial Court, PW-7 stated in Para-10 of his examination that the liquefied bloody discharge from the deceased's mouth and nose coupled with the bruise marks could be caused by asphyxia and it was possible that it was a case of smothering. In Para- 11 of his examination by the trial Court, PW-7 stated that congestion of lungs and brain was not found in case of death under normal circumstances. As per the postmortem report however, there was congestion of the brain and lungs of the deceased. It was possible that the victim was prevented from inhaling or breathing through any means. Since the learned trial Court was questioning the witness in exercise of its powers under Section



165 of the Indian Evidence Act, we believe that the Court should have been more vigilant in putting the right questions to PW-7 in order to ascertain the true cause of the death of the deceased. This we say because the cause of the death was not ascertained by the medical officer but the same was not corroborated by the postmortem report and the questions which the trial Court put to the doctor indicated a homicidal case. There was no finding by the trial Court with respect to the cause of death as mentioned in the postmortem report and the depositions of the witnesses.

22. The trial Court in exercise of its powers under Section 313 of Cr.P.C. did not ask the accused-respondent relevant questions in order to arrive at the final verdict. The learned trial Judge did not ask him about how he got the injuries on his face and neither did he ask the accused-respondent how did his wife die since he was present at the place of occurrence.

23. The proper compliance of Section 313 of Cr.P.C. has not been done and only a mere mention of Section 313 of Cr.P.C. has been done. Considering the provision of Section 313 of the Cr.P.C., this provision has a purpose of empowering the Court to examine the accused to meet the



requirement of the principle of natural justice and the accused on the basis of this provision, may be asked to furnish some explanation as regards the incriminating circumstances associated against him and the Court must take note of such explanation. The provision of Section 313 is to establish a direct dialogue between the Court and the accused and a proper methodology is to be adopted by the Court for recording the statement of the accused to by throwing light upon the incriminating circumstances and evidence and seek an explanation of the accused person. If the opportunity of examination under Section 313 is given to the accused, and is not done in an accurate manner, it may result in imperfect appreciation of evidence.

24. In *Indra Kunwar v. State of Chhattishgarh* reported in **2023 SCC OnLine SC 1364**, their Lordships held that the intent of the provision of Section 313 Cr.P.C is to establish a dialogue between the Court and the accused. The process aids the Court in arriving at a final verdict. We note that in the instant case, there were lapses on the part of prosecution to establish the cause of death. At the same time we also find that the trial Court did not exercise its power under Section 313 to put forth the correct set of questions which would help the



court to arrive at the conclusion as to how the deceased died. The trial Court was mechanical in its approach in putting questions to the accused.

25. In *Indra Kunwar (supra)* the Apex Court evolved principles to be followed while framing questions under Section 313 of the Cr.P.C. examination which reads as follows:-

35. On perusal of various judgments rendered by this Court reveals the following principles, as evolved overtime when construing such statements.

35.1. The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

35.2. The intent is to establish a dialogue between the Court and the accused. The process benefits of the accused and aids the Court in arriving at a final verdict.

35.3. The process enshrined is not a matter of procedural formality but is based on the cardinal principles of natural justice i.e. audi alterum partem.

35.4. The ultimate test when concern with the complaints of the section is to inquire and ensure whether the accused got the opportunity to say his piece.

35.5. In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even



offer an alternative version of events or interpretations. The accused may not be put to prejudice to any omission or inadequate questioning.

35.6. The right to remain silent or any answer to question which may be false shall not be used to his detriment being the sole reason.

35.7. This statement cannot found the sole basis of conviction and is neither a substance to or a substitute piece of evidence. It does not discharge but reduces the prosecution burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

35.8. This statement is to be read as a whole. One part cannot be read in isolation.

35.9. Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of Indian Evidence Act, 1872, however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

35.10. The circumstances not put to the accused while rendering his statement under Section R to be excluded from consideration as no opportunity has been offered to him to explain them.

35.11. The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his



defense. The defense so articulated must be carefully scrutinized and considered.

35.12. Non-compliance with the section may cause to the prejudice to the accused and may impede the process of arriving at a fair consideration.

(emphasis applied)

26. In *Nar Singh v. State of Haryana, (2015) 1*

SCC 496, the Hon'ble Supreme Court was considering the question whether the appellate court can direct a retrial if all the relevant questions are not put to the accused by the trial court as required under Section 313 Cr.P.C. The Hon'ble Supreme Court answered the question in the affirmative, holding that the appellate court may direct a retrial in such circumstances from the stage of questioning the accused because non-compliance of Section 313 Cr.P.C had caused prejudice to the accused:

“30.3. If the appellate court is of the opinion that non-compliance with the provisions of Section 313 Cr.P.C has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 Cr.P.C and the trial Judge may be directed to examine the accused afresh and defence witness, if any, and dispose of the matter



afresh.”

27. The trial Court failed to summon Dr. Anil Kumar who was the doctor at the Primary Health Centre, Chandi as to the injury report which enlisted the injuries on the face of the accused-respondent. PW-5 stated in her examination-in-chief that she got the information of her daughter's death from one Arvind Prasad. However, the trial Court did not summon this person as well to examine him. These witnesses are material witnesses in the present case and the omission to examine them has resulted in gross injustice to the prosecution. The trial Court also erred in not examining Dr. Mahendra Kumar who had prepared the postmortem report as he could have given information as to the cause of death of the deceased. The submission of the learned counsel for the informant/appellant is that the death of Chanchal Kumari was caused due to smothering of her face by the accused-respondent is supported by the postmortem report which stated that there were bruise marks on the deceased's eyes and by the injury investigation report which stated that there were abrasion marks on the accused-respondent's face as well. It indicates resistance offered by the deceased right before succumbing to asphyxiation. The postmortem report (Exhibit-7) also mentions



that the brain and lungs of the deceased were congested which further indicate asphyxia.

28. In light of the facts which appear before us and the gross negligence shown by the prosecution as well as the trial Court, we believe that there has been several lapses on the part of the prosecution in bringing forth the correct chain of events leading to the death of the deceased and by the trial Court for not taking steps to reach a final verdict. The unnatural death of the deceased after 18-20 years of her marriage to the accused-respondent has not been explained. The medical officer and the I.O. had failed to ascertain the cause of death especially in light of the injuries found on the deceased's face and the accused-respondent's face. Further, some indispensable witnesses such as Dr. Mahendra Prasad and Dr. Anil Kumar, who examined the accused-respondent have not been summoned by the trial Court to record their statements.

29. In a recent judgment in the case of *Nasib Singh v. State of Punjab*, (2022) 2 SCC 89 the Apex Court held as follows:

The principles that emerge from the decisions of this Court on retrial can be



formulated as under:

(i) The Appellate Court may direct a retrial only in 'exceptional' circumstances to avert a miscarriage of justice;

(ii) Mere lapses in the investigation are not sufficient to warrant a direction for retrial. Only if the lapses are so grave so as to prejudice the rights of the parties, can a retrial be directed;

(iii) A determination of whether a 'shoddy' investigation/trial has prejudiced the party, must be based on the facts of each case pursuant to a thorough reading of the evidence;

(iv) It is not sufficient if the accused/prosecution makes a facial argument that there has been a miscarriage of justice warranting a retrial. It is incumbent on the Appellant Court directing a retrial to provide a reasoned order on the nature of the miscarriage of justice caused with reference to the evidence and investigatory process;

(v) If a matter is directed for re-trial, the evidence and record of the previous trial is completely wiped out; and

(vi) The following are some instances, not intended to be exhaustive, of when the Court could order a retrial on the ground of miscarriage of justice:

a) The trial court has proceeded with the trial in the absence of jurisdiction; b) The trial has been vitiated by an illegality or irregularity based on a misconception of



the nature of the proceedings; and c) The prosecutor has been disabled or prevented from adducing evidence as regards the nature of the charge, resulting in the trial being rendered a farce, sham or charade.

30. In the case of *Issac v. Ronald Cheriyan*, (2018) 2 SCC 278 the Hon'ble Supreme Court held that:

“14. In appeal against acquittal, in exceptional circumstances, the High Court may set aside the order of acquittal even at the instance of private parties, though the State may not have thought it fit for appeal. But it is to be emphasised that this jurisdiction is to be exercised only in exceptional circumstances when there is glaring defect in the conduct of trial which has materially affected the trial or caused prejudice. In the present case... The High Court further observed that the fingerprint expert who prepared Ext. P-8 ought to have been examined and other circumstances emerging out of evidence ought to have been examined by the trial court. The High Court further observed that because of the omission to frame the charges under Section 34 IPC, in spite of framing the issue of common intention, the trial court has not examined the evidence in proper perspective, which according to the High Court has materially affected the trial which is called for retrial. The discretion exercised by the High Court under Section 386(a) Cr.P.C directing retrial with certain directions cannot be said to be erroneous warranting interference.”



31. In the case of *Ajay Kumar Ghoshal v. State of Bihar, (2017) 12 SCC 699*, the Hon'ble Supreme Court had stated that:

“Though the word “retrial” is used under Section 386(b)(i) CrPC, the powers conferred by this clause is to be exercised only in exceptional cases, where the appellate court is satisfied that the omission or irregularity has occasioned in failure of justice. The circumstances that should exist for warranting a retrial must be such that where the trial was undertaken by the court having no jurisdiction, or trial was vitiated by serious illegality or irregularity on account of the misconception of nature of proceedings. An order for retrial may be passed in cases where the original trial has not been satisfactory for some particular reasons such as wrong admission or wrong rejection of evidences or the court refused to hear certain witnesses who were supposed to be heard.”

32. At the outset, it would be imperative to mention 427(a) of the Bharatiya Nagrik Suraksha Sanhita, 2023 (Section 386 (a) Cr.P.C, since repealed) which reads as under:

“427. After perusing such record and hearing the appellant or his advocate, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 418 or section 419, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground



for interfering, dismiss the appeal, or may

—

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;”

In light of the powers conferred on the appellate court under Section 427(a) of the Bharatiya Nagrik Suraksha Sanhita, 2023 we now come to the merits of the present case.

33. In the instant case, we find that the trial Court did not examine some indispensable witnesses who could have helped the Court in arriving at the conclusion as to the occurrence of the death of the deceased. We note that the failure to issue summons to the important witnesses and their non-examination by the Court has seriously impaired the right of the appellant to arrive at the truth of her daughter's unnatural death. Despite their being ocular evidences of injury marks on both the deceased and the accused-respondent the trial Court turned a blind eye to the same and also failed to ascertain the cause of death. Further, the trial Court should have drawn the attention of the I.O. to the statements made by PW-2, 3 and 4 before the police for contradicting his statement made in Para-27 of his cross-examination that there were no marks of violence at the



place of occurrence. The entire trial was conducted in a mechanical manner and the trial Judge did not apply his judicious mind to ask the right questions to the witnesses and the accused. Although the trial Court is not duty-bound to ask questions to the witnesses, when it does ask, it should ask the right questions which could help in ascertaining the correct chain of circumstances.

34. We note that there have been serious lapses in the trial of the accused/respondent no. 2. These lapses have resulted in miscarriage of justice for the appellant as she has been devoid of the knowledge as to how her daughter was killed. The gravity of injustice is evident from the ocular and documentary evidences indicating that there was injuries on the face of the deceased below the right eyelid and on the lateral aspect on the left eyebrow. Further there were injuries of abrasions on the face of the deceased. The accused-respondent was found next to the dead body by the police and people living nearby. Three important witnesses were also not summoned by the trial Court and not even brought on record by the I.O. The callous and mechanical approach of the trial Court in not applying its judicial mind to the present case make it one of the rarest cases which we believe should be remanded back for trial.



The cause of the death has not been ascertained by the prosecution or by the trial Court and thus the appellant is left to the mercy of the Court to get justice. Thus, we are of the view that this case is a fit case for ordering a retrial.

35. We, therefore, have no hesitation in setting aside the judgment and order dated 23.02.2024 passed by the learned Additional Sessions Judge-1, Hilsa (Nalanda) in Sessions Trial No. 441 of 2021 arising out of Chandi P.S. Case No. 32 of 2021 against the appellant and directing for a *de novo* trial. The impugned judgment and order are accordingly set aside.

36. The respondent no. 2 is directed to surrender before the trial Court within four weeks from the date of this order, failing which the learned trial Court below shall take coercive steps to procure his appearance and the Superintendent of Police, Nalanda shall execute the order of the learned trial Court without any delay. The trial Court is directed to conclude the trial expediently after the procurement of attendance of the respondent no.2. In case of surrender within the prescribed period as mentioned above, the learned trial Court shall release the respondent no. 2 on furnishing bail bond to the satisfaction



of the learned trial Court.

37. Let a copy of the judgment be communicated to the learned trial Court and the records of the trial Court be sent back.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	03.03.2025
Transmission Date	03.03.2025

