

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.1364 of 2019**

Arising Out of PS. Case No.-29 Year-2008 Thana- SAUR BAZAR District- Saharsa

Chandan Devi @ Chanda Devi @ Nunu Devi @ Nunu Wife of Raju Sah,  
Resident of Village - Jamhara Bichala Tola, P.S.- Saur Bazar, Distt - Saharsa.  
Presently residing at Village - Madanpur, Leli Nagar, Ward No. 4, Bharahi,  
P.S.- Madhepura, Distt - Madhepura.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

**Appearance :**

For the Appellant/s : Dr. Sanjay Kumar Singh, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**

**and**

**HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)**

**Date : 04.05.2026**

The present appeal preferred by appellant/convict against judgment of conviction dated 21.10.2019 and order of sentence dated 22.10.2019 passed by the learned Presiding Officer, Fast Track Court, Saharsa, in Sessions Trial Case No. 3/13/2102/14 arising out of Saur Bazar P.S. Case No. 29/2008, whereby and whereunder appellant/convict has been convicted for the offences punishable under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and fine of Rs. 5,000/-, and in default of payment of fine, he shall further directed to undergo simple imprisonment for a period of six months.



**BRIEF CASE OF PROSECUTION :**

**2.** The crux of prosecution, as it appears from the *fard-e-beyan* of the informant/PW-6, namely, Dinesh Yadav that on 28.01.2008, his seven years old son, namely, Ashish Kumar, returned home from school for lunch. While going back to school, the appellant Chandan Devi, who was their neighbour, called him and gave him "shakkar" (sugar) to eat. After consuming it, the child started vomiting on the way and became unconscious. He was taken for medical treatment but died during the course of treatment. The informant alleges that the appellant had administered poison mixed in the "shakkar," thereby causing the death of the child.

**3.** On the basis of aforesaid *fard-e-beyan*, Saur P.S. Case No. 29/2008 was registered, when after completion of investigation police submitted charge-sheet against accused person on 31.10.2012 under Sections 302 and 328 of the Indian Penal Code. Cognizance was also taken on 23.11.2012 for the offence under Sections 328 and 302 of the IPC by learned Jurisdictional Magistrate.

**4.** After taking cognizance and making compliance



of Section 207 of the Cr.P.C., the learned Magistrate, Saharsa committed the present case to the Court of Sessions, Saharsa under Section 209 of the Cr.P.C., for its trial and disposal.

**5.** To established its case before the learned trial court, the prosecution altogether examined total of **11** witnesses, namely, **P.W .1-** Baijnnath Yadav, **P.W.2-** Urmila Devi, **P.W. 3-** Dilip Yadav, **P.W.4-** Raj Karan Yadav, **P.W. 5-** Maharani Devi, **P.W.6-** Dinesh Yadav (Informant), **P.W.7-** Mantu Sah, **P.W.-8** Dr. Krishna Muari Prasad Singh, **P.W. 9-** N.D. Nirala, **P.W.- 10-** Pankaj Kumjar and **P.W. 11-** Aslam Ansari.

**6.** The prosecution also exhibited following documents during the trial to substantiate its case which are as:-

**Exhibit-1** – Signature of witness Dilip Yadav on the Inquest Report.

**Exhibit-2** – Signature of witness Raj Karan Yadav on the Fardbeyan (First Information Statement).

**Exhibit-2/1** – Signature of witness Raj Karan Yadav on the Inquest Report.

**Exhibit-3**–Fardbeyan (First Information report).



**Exhibit- 4** – Signature of witness Dinesh Yadav on the Protest Petition.

**Exhibit-5** – Forensic Science Laboratory (F.S.L.) Report No. 1578/09 dated 23.02.2012

**Exhibit-6** – Post-mortem Report of the deceased Ashish Kumar

**Exhibit-7**– Endorsement/Notation on the First Information Report (FIR)

**Exhibit-8** – Inquest report

**7.** After examination of the prosecution witnesses and by taking note of evidences and incriminating circumstances as surfaced during the trial, the statement of appellant/accused person was recorded under Section 313 of the Cr.P.C., which was denied in totality by showing complete innocence.

**8.** In support of defence, accused person examined one witness, who examined before the learned trial court as **DW-1**, namely, Banarasi Sah.

**9.** On the basis of aforesaid evidences as surfaced during the trial, the learned trial court convicted the appellant/convict and passed order of sentences in aforesaid manner, being aggrieved with, appellant/convict preferred the present appeal.



**10.** Hence the present appeal.

**ARGUMENT ON BEHALF OF APPELLANT**

**11.** Learned counsel appearing on behalf of appellant/accused submitted that the prosecution case suffers from serious inconsistencies and contradictions which render the evidence of P.Ws 1 to 6 unreliable and untrustworthy. Their depositions are not only mutually contradictory but also inconsistent with the fardbeyan of the informant. Except P.W. 3, no witness claims to be an eye-witness to the alleged occurrence, and even his presence at the scene is doubtful as none of the other prosecution witnesses have corroborated that he was present when the alleged act took place. Such discrepancies strike at the root of the prosecution's version and make it unsafe to rely upon their testimonies. It is further submitted that material contradictions exist regarding the circumstances following the alleged incident. While P.W. 2 stated that the deceased became unconscious after vomiting and she left to inform others, other witnesses claim that the deceased disclosed to them that the appellant had given him "Shakkar." This



inconsistency raises serious doubt about the alleged oral dying declaration. Moreover, the Investigating Officers (P.Ws 9, 10, and 11) did not find any signs of vomiting at the place of occurrence, nor did they find any shop belonging to the appellant from where the alleged substance was said to have been given, thereby undermining the core prosecution story. The appellant also highlights significant procedural lapses and evidentiary gaps in the prosecution case. There was unexplained delay in sending the viscera for examination and in obtaining the report, which weakens the medical evidence. Additionally, no formal dying declaration was recorded. Independent witnesses such as P.W. 7 and D.W. 1 have not supported the prosecution case, further casting doubt on its credibility. The existence of prior disputes between the parties also suggests the possibility of false implication.

**12.** Lastly, while concluding the argument, it is submitted that the cumulative effect of above submitted unreliable evidence, investigative lapses, and lack of credible proof clearly demonstrates that the prosecution has failed to establish its case beyond reasonable doubt. Therefore, the



impugned judgment is unsustainable in law and deserves to be set aside.

**LEGAL SUPPORT**

**13.** Learned counsel relied upon the legal report of Hon'ble Supreme Court as available through ***Sampath Kumar Vs. Inspector of Police, Krishnagiri*** reported as ***(2012) 4 SCC 124***, ***Arun Bhanudas Pawar Vs. State of Maharashtra*** reported as ***(2008) 11 SCC 232***, ***Waikhom Yaima Singh Vs. State of Manipur*** reported as ***(2011) 13 SCC 125*** and ***Poonam Bai Vs. State of Chhattisgarh*** reported as ***(2019) 6 SCC 145***.

**14.** It would be apposite to refer para Nos. 21 to 25 of the legal report of Hon'ble Supreme Court in the matter of ***Sampath Kumar's case (supra)***, which reads as under:-

**"21.** In *Narayan Chetanram Chaudhary v. State of Maharashtra [(2000) 8 SCC 457 : 2000 SCC (Cri) 1546 : AIR 2000 SC 3352]* this Court held that while discrepancies in the testimony of a witness which may be caused by memory lapses were acceptable, contradictions in the testimony were not. This Court observed: (SCC p. 483, para 42)



*"42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person."*

**22.** *The difference between discrepancies and contradictions was explained by this Court in State of H.P. v. Lekh Raj [(2000) 1 SCC 247 : 2000 SCC (Cri) 147 : AIR 1999 SC 3916] . Reference may also be made to the decision of this Court in State of Haryana v. Gurdial Singh [(1974) 4 SCC 494 : 1974 SCC (Cri) 530 : AIR 1974 SC 1871] where the prosecution witness had come out with two inconsistent versions of the occurrence. One of these versions was given in the court while the other was contained in the statement made before the police. This Court held that these were contradictory versions on which the conclusion of fact could not be safely based.*

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**24.** *Reference may also be made to the decision of this Court in Kehar Singh v. State (Delhi Admn.) [(1988) 3 SCC 609 : 1988 SCC (Cri) 711 : AIR 1988 SC 1883] . This Court held that if the discrepancies between the first version and the evidence in court were material, it was safer to err in acquitting than in convicting the accused.*

**25.** *In the present case the statement made by Palani (PW 7) is in complete contrast with the statement made by him before the police where the witness stated nothing about having seen the appellants standing near the deceased around the time of the incident. This omission is of very vital character. What affects the credibility of the witness is that he did not in his version to the police come out with what according to him is the truth, but withheld it for a period of five years till he was examined as a prosecution witness in the court".*

**15.** It would be further apposite to refer para No. 25 of the legal report of Hon'ble Supreme Court in the matter of ***Arun Bhanudas Pawar's case (supra)***, which



reads as under:-

**"25.** *It is well-settled law that the oral dying declaration made by the deceased ought to be treated with care and caution since the maker of the statement cannot be subjected to any cross-examination. In the present case, admittedly, the alleged dying declaration had not been made to any doctor or to any independent witness, but only to the mother who, as stated above, arrived at the hospital only on the following day at about 3.30 p.m. when Dr. Nitin had already operated Raju for his injuries and thereafter he was lying on the bed in unconscious condition with oxygen tubes having been inserted in his nostrils. The prosecution has not brought on record any medical certification to prove that after operation the deceased was in a fit condition to make the declaration before his mother. The evidence of alleged oral dying declaration by the deceased Raju to his mother PW Sundarbai relied upon by the prosecution and accepted by the trial court and the High Court, in our view, was not cogent, satisfactory and convincing to hold that deceased Raju before his death was in a fit condition to make oral declaration to his mother."*

**16.** It would be also apposite to refer para No. 20 of the legal report of Hon'ble Supreme Court in the matter of ***Waikhom Yaima Singh's case (supra)***, which



reads as under:-

**"20.** *There can be no dispute that the dying declaration can be the sole basis for conviction, however, such a dying declaration has to be proved to be wholly reliable, voluntary and truthful and further that the maker thereof must be in a fit medical condition to make it. The oral dying declaration is a weak kind of evidence, where the exact words uttered by the deceased are not available, particularly because of the failure of memory of the witnesses who are said to have heard it. In the present case also, the exact words are not available. They differ from witness to witness. Some witnesses say about the name of the village of the appellant having been uttered by the deceased and some others do not. Further, Dr. Ningombam Shyamjai Singh (PW 12) was also not cross-examined by the Public Prosecutor in this case about the medical condition of the deceased and further fact as to whether he was in a fit condition to make any statement."*

**17.** It would be again apposite to refer para Nos. 10,16 & 17 of the legal report of Hon'ble Supreme



Court in the matter of **Poonam Bai's case (supra)**, which reads as under:-

**"10.** *There cannot be any dispute that a dying declaration can be the sole basis for convicting the accused. However, such a dying declaration should be trustworthy, voluntary, blemishless and reliable. In case the person recording the dying declaration is satisfied that the declarant is in a fit medical condition to make the statement and if there are no suspicious circumstances, the dying declaration may not be invalid solely on the ground that it was not certified by the doctor. Insistence for certification by the doctor is only a rule of prudence, to be applied based on the facts and circumstances of the case. The real test is as to whether the dying declaration is truthful and voluntary. It is often said that man will not meet his Maker with a lie in his mouth. However, since the declarant who makes a dying declaration cannot be subjected to cross-examination, in order for the dying declaration to be the sole basis for conviction, it should be of such a nature that it inspires full confidence of the court. In the matter on hand, since Ext. P-2, the dying declaration is the only circumstance relied*



*upon by the prosecution, in order to satisfy our conscience, we have considered the material on record keeping in mind the well-established principles regarding the acceptability of dying declarations.*

**16.** *As far as the oral dying declaration is concerned, the evidence on record is very shaky, apart from the fact that evidence relating to oral dying declaration is a weak type of evidence in and of itself. As per the case of the prosecution, the deceased had made an oral dying declaration before Lalita Sahu (PW 2), Pilaram Sahu (PW 3), Parvati Bai (PW 4), and others. Though PWs 2, 3 and 4 have deposed that the deceased did make an oral dying declaration before them implicating the appellant, this version is clearly only an afterthought, inasmuch as the same was brought up before the trial court for the first time. In their statements recorded by the police under Section 161 of the Code of Criminal Procedure, these witnesses had not made any statement relating to the alleged oral dying declaration of the deceased. These factors have been noted by the trial court in its detailed judgment. Thus, the evidence of PWs 2, 3 and 4 relating to the oral dying declaration is clearly an improved version, and this has*



*been proved by the defence in accordance with law.*

***17.** Since the evidence relating to the dying declarations has not been proved beyond reasonable doubt by the prosecution, in our considered opinion, the High Court was not justified in convicting the appellant, inasmuch as there is no other material against the appellant to implicate her. The motive for the offence, as alleged by the prosecution, has also not been proved.”*

#### **ARGUMENT BY STATE**

**18.** Learned APP while opposing the appeal submitted that the judgment passed by the court is based on proper appreciation of evidence and which should not be disturbed. It is submitted that the contradictions pointed out in the statements of PWs. 1 to 6 are minor in nature and do not affect the main case of the prosecution. The basic story remains the same that the deceased consumed the substance allegedly given by the appellant and his condition worsened thereafter. The evidence of PW-3 cannot be rejected only because no other witness has supported his presence, if his statement appears reliable. However, the



learned APP fairly submits that the case mainly depends on circumstances and the alleged oral dying declaration. Such a statement is admissible in law, but it must be examined carefully, especially because there are differences in the version of witnesses about the condition of the deceased. The absence of signs of vomiting at the place of occurrence and non-seizure of the alleged "*Shakkar*" are also important aspects, which need consideration.

**19.** It is further submitted that lapses in investigation, like delay in sending the viscera or not seizing the substance, do not automatically destroy the prosecution case, but they required the Court to examine the evidence more carefully to see whether the case is proved beyond reasonable doubt.

**20.** I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

**DISCUSSION OF EVIDENCE:**

**21.** As to re-appreciate the evidence, while



disposing the present appeal, it is apposite to discuss the evidences available on record, which are as under:-

**22. PW-1** is Baijnath Yadav, who deposed that about four and a half years ago, on a Monday at around 1:30 PM, he heard a commotion near Godaramawali's house while returning home and went there. He saw Dinesh's 7-years old son, Ashish, vomiting repeatedly but conscious and speaking. The child said that Chandan Devi had given him sugar, which caused his condition.

**22.1** Upon cross-examination, it was stated by him that around 20-25 villagers were present, and he stayed for about two hours, observing the boy vomit several times. The incident occurred on a roadside, and he later informed the police, who inspected the scene though no samples were collected.

**23. PW-2** is Urmila Devi @ Godaramawali, who deposed that about five years ago during the afternoon, she was at her doorstep when she saw Ashish lying near her gate and vomiting. She went to inform his father, Dinesh, who came to the spot along with others. She deposed that



although she did not personally see who gave anything to the child, Ashish told his father that Pujiya's mother (Raju's wife, also known as Farsaha Wali) had given him sugar, which caused his condition. Ashish was later taken for treatment by Dinesh but did not survive.

**23.1** Upon cross-examination, it was stated by her that her house is adjacent to the road where Ashish was found lying on his left side after falling off the road. She deposed that she had gone to call Dinesh, whose house is at some distance with several houses in between, and after informing him, she returned home due to stomach pain and did not revisit the scene. She mentions that when she saw Ashish, he was alone, unable to speak clearly, though he had asked her to call his father. She admits that she had not previously given any statement to the police or inspector and that this was her first statement in court. She denies the suggestion that she is falsely deposing due to any relationship with Dinesh and also that no such incident occurred.

**24. PW-3** is Dilip Yadav, who stated that about



five years ago, on a Monday around 1:00 p.m., he had gone to drop his daughter at school and thereafter visited Chandan Devi's grocery shop. In his presence, Chandan Devi gave sugar to Dinesh's son, Ashish. Shortly after walking some distance, Ashish began vomiting, causing a commotion. Dinesh, his wife, and others including Rajkaran, Kripal, and Arunendra Yadav arrived. Ashish was taken to Madhepura for treatment, where doctors declared him dead. He accompanied them and returned with the body in a tempo. He further stated that later on the police came to the house and recorded statements, and prepared a death report on which he signed **(Exhibit 1)**. He confirmed that he recognized the accused and denied that he had informed the police about the incident.

**24.1** Upon cross-examination, he denied the correctness of the police statement attributed to him, asserting that he was present when Ashish was given sugar and did not merely hear about the incident later. He refuted the claim that he had stated no one saw Ashish being given or consuming sugar. He clarified his relationship with Dinesh,



stating that their houses are only four yards apart among neighboring homes. He described events after the death, including returning with the body, the presence of several villagers, and Dinesh and his wife fainting. He reiterated that they traveled to Madhepura together and returned the same day, and that the police visited their house rather than the hospital. Finally, he denied the suggestion that he was giving false evidence due to his relationship with Dinesh or that the incident had not occurred as described.

**25. PW-4** is Raj Karan Yadav, who stated that about four and a half years ago, on a Monday at around 1:00 p.m., he was at home when he heard a commotion and went to the road in front of Chandan Devi's shop, where he saw his cousin Ashish Kumar vomiting. Ashish's parents were present, and Ashish told them that Chandan Devi had given him sugar to eat, after which he felt nauseous; the witness also saw sugar on Ashish's hands. Ashish was taken by tempo to Dr. Shivji Singh's clinic at Patarghat, who immediately referred him to Madhepura Hospital. Upon reaching Madhepura, the doctor declared Ashish dead,



causing his parents to faint. The body was then brought home. The police later came to the house, recorded Dinesh Yadav's statement, and obtained the witness's signature (Exhibit 2), as well as his signature on the death certificate (Exhibit 2/1). The witness also described the location of the incident near his house, the presence of villagers, and the sequence of events leading to Ashish's death. It was further stated that he had informed the police that upon hearing the commotion, he saw Ashish vomiting and heard Ashish attribute the consumption of sugar given by Chandan Devi as the cause. He clarified certain details about the journey to the hospital, stating that they prioritized taking Ashish for treatment rather than informing the police, and that neither they nor the doctors informed the police at Madhepura. He admitted that no post-mortem was conducted and that a death certificate was obtained later. He also stated that he and Dinesh Yadav were detained by police in the same evening. The witness denied suggestions that he was falsely implicating the accused due to prior land disputes or enmity, and rejected the claim that no such incident occurred,



asserting instead that Ashish's death did occur under the circumstances described.

**26. PW-5** is Maharani Yadav, reveals that the alleged occurrence took place about five years prior to her deposition, on a Monday at approximately 1:00 PM. She deposed that her son, Ashish, aged about seven years and a student of Class I, had returned home from school, taken a pencil, and thereafter gone out. According to her, upon reaching the shop of the accused, namely Chandni Devi, the child was called inside and was offered sugar. It is her case that after consuming the said substance, the child proceeded a few steps but immediately began vomiting. She further stated that upon receiving information from one Urmila Devi, she, along with her husband, rushed to the spot, where her son disclosed that the accused had given him sugar which tasted bitter and had caused continuous vomiting. She deposed that the child was immediately taken to a doctor at Patarghat, who referred him to Madhepura Hospital, where he was declared dead upon examination. She also stated that upon hearing the news, she and her husband fainted and



were subsequently brought back home. She has further sought to attribute motive to the accused by stating that on the same day, prior to the occurrence, her husband had sent the child to the shop of the accused with one rupee to purchase soap, which was allegedly found to be fake, leading to a quarrel between her husband and the accused. On this basis, she asserted that the accused, with intent, administered a poisonous substance mixed in sugar to her son, resulting in his death. She also claimed to identify the accused in Court.

**26.1** Upon cross-examination, she stated that she had earlier given her statement to the police and denied the suggestion that Urmila Devi had informed her that her son was lying unconscious after vomiting, clarifying instead that when she reached the spot, her son was not unconscious. She further denied that she had not stated before the Investigating Officer that her son Ashish, after returning from school and taking a pencil, went to the shop of Chandni Devi, where he was given sugar after consuming which he started vomiting, and affirmed that she had



disclosed to the police that the child was taken to Dr. Shivji at Patarghat. She deposed that she had been married for about 15–16 years and had three children, namely one son, Ashish (aged about 7 years), and two daughters, the son being the middle child. She further stated that the house of the accused is situated to the south of her house and that although the accused's family had been residing in the locality for a long time, they fled after the death of her son, leaving their land vacant, and she denied the suggestion that members of the Yadav community intended to grab the accused's land, prompting her to flee. The witness also stated that Dakshin School is located three houses away from her house, where her son had been studying for about one year, and that upon hearing of the incident, the teacher, Lalanji, along with others, came to the spot and on inquiry her son disclosed that the accused had given him sugar mixed with alcohol. She further deposed that several villagers, including Baijnath Yadav, Dilip Yadav, Rajran Yadav and others, had assembled, and that five to six persons, namely herself, her husband, Dilip Yadav, Arvind Yadav,



Bajnath Yadav and her sister-in-law, took the child to Patarghat for treatment. She also stated that her son was a student of Government Middle School, Jamhara, and denied the suggestion that he did not attend school, asserting that he had been studying there, and clarified that although the school timing was up to 4:00 PM, her son had returned home earlier to take a pencil. Finally, she denied all suggestions that the case was false, instituted to grab the land of the accused, or that she was deposing falsely, and reiterated that the occurrence had taken place in the manner stated by her.

**27. PW-6** is Dinesh Yadav, who deposed that the alleged occurrence took place on Monday, 28.01.2008 at about 1:00 PM, when his son, Ashish Kumar, aged about seven years, while proceeding towards school, was allegedly called by the accused/appellant, Chandan Devi, to her shop and was given sugar, after consuming which he immediately started vomiting. He deposed that upon receiving information from Pramila Devi, he along with his wife rushed to the spot, where the child disclosed that he had been vomiting after



consuming the sugar given by the accused and soon became seriously ill. The witness further stated that the child was taken by tempo towards Madhepura for treatment and was first shown to Dr. Shivaji Singh at Patarghat, who referred him to Madhepura Government Hospital, where he was declared dead. Upon hearing the same, he and his wife fainted and were subsequently brought back home by their nephew Rajkaran, accompanied by Dilip. He further deposed that in the evening the Inspector recorded his statement at his house, which upon identification was marked as **Exhibit-3**, and he identified the accused present in Court. He also stated that the death certificate was issued by the doctor at Madhepura. The witness has further attributed motive by stating that on the morning of the occurrence, the accused had sold fake soap to his son, which led to a quarrel between him and the accused, during which she allegedly threatened to render him childless, and that thereafter she administered poison mixed with sugar to his son, resulting in his death. He also stated that he had filed a protest petition before the Court upon learning that the police had favoured the



accused.

**27.1** Upon cross-examination, He candidly admitted that neither he nor his wife had witnessed the alleged act of poisoning, but stated that his son, Ashish Kumar, had informed him that Chandan Devi had called him and given him sugar, after consuming which he began vomiting, and he further added that at that time sugar was found on the child's hands and in his mouth. He deposed that he had disclosed to the police the earlier incident of the accused selling fake soap and threatening to render him childless, which, according to him, constituted the motive. He further stated that his son had been studying in Class I at Government School, Jamhara, for about one year and used to go either alone or with his sister, and that the school is situated to the south of his house, with the accused being his neighbour. The witness stated that upon reaching the spot, he found his son sitting in a bent condition and vomiting, and upon inquiry, the child reiterated that he had been given sugar by the accused thereafter, he immediately took the child by tempo for treatment along with his wife, nephew



Rajkaran, and villager Dilip Yadav, first showing him to Dr. Shivji at Patarghat, who referred him to Madhepura. He also described the condition of the child, stating that he was wearing a navy blue shirt, half pants, and shoes and socks, all of which were soiled with vomit. Finally, he denied the defence suggestions that the accused did not reside at Jamhara or had no shop there, or that the case had been falsely instituted to grab her land, and asserted that his son was indeed attending school as stated.

**28. PW-7** is Mantu Sah, who declared hostile by prosecution as he did not supported the case of prosecution during trial. From his cross-examination, nothing transpired so as to contradict or corroborate the version of other prosecution witnesses, who supported the case of prosecution.

**29. PW-8** is Dr. Krishna Murari Prasad Singh, who stated that on 29.01.2008, while he was posted as M.O. at Sadar Hospital, Saharsa, where he examined dead body of Ashish Kumar, aged 7 years S/o Dinesh Yadav R/o village Jamrha Bichla tola P.S. Saur Bazar, Dist Saharsa, and found



the following:-

On external examination- Eye closed, Mouth opened. No any external injury was present on his body.

On Internal examination-

Head and neck- N.A.D

thorax- Lungs congested

Abdomen- Stomach contents partially digested food material, All other Visceras N.A.D

Cause of death- Could not be ascertained however the following visceras are preserved for chemical examination.

(i) Part of lungs (2) Part of Heart (3) Part of stomach and its contents (4) Part of liver (5) Part of spleen (6) Part of Kidney.

**30. PW-9** is N.D. Nirala, who is Investigating Officer of this case. He deposed that on 28.01.2008 he was posted as President at Patarghat O.P., P.S. Saur Bazar, and upon receiving information from Rajkaran Yadav that the son of Dinesh Yadav had died at Sadar Hospital, Madhepura after allegedly being administered some substance mixed in sugar



by a neighbour woman, he proceeded to village Jamhara for investigation, where he recorded the fardbeyan of the informant in his own handwriting and signature, which was marked as **Exhibit-3**, along with his endorsement marked as **Exhibit-7**, the same being signed by the informant and the witness Rajkaran Yadav, and the statement of the informant was subsequently re-recorded. He further deposed that he prepared the inquest report of the deceased Ashish Kumar in his own handwriting and signature, which marked as **Exhibit-8**, and inspected the place of occurrence at Jamhara Bichla Tola, describing its boundaries and location on the road from Patarghat Bazar to Atalkha Mangwar, where the deceased was allegedly found after vomiting. He also recorded statements of several witnesses including Rajkaran Yadav, Maharani Devi, Urmila Devi, Banarasi Sah, Mantu Sah, Dilip Yadav, Baijnath Yadav and Amarendra Yadav, and noted that witness Mantu Sah had spoken about a prior dispute regarding soap and alleged that the accused, Chandan Devi, had given sugar to the deceased before his death. He further stated that the post-mortem report was



received from Sadar Hospital, Madhepura and entered in the case diary, and thereafter the investigation was handed over to Sub-Inspector and O.P. In-charge Surendra Jha.

**30.1** Upon cross-examination, he stated that although he had received information that the deceased had died at Madhepura Hospital, he did not visit the hospital, but later saw the dead body on 28.01.2008 at about 7:45 PM at the residence in village Jamhara. He affirmed that the complaint was entered in the station diary though it bore neither number nor date, and denied having made any false statement or that the original complaint was not before him. He further stated that he had the case diary with him and that statements of the informant Dinesh Yadav and witnesses including Rajkaran Yadav, Maharani Devi, Urmila Devi, Banarasi Sah, Baidyanath Yadav and Amarendra Yadav were recorded, though the names of witnesses were not mentioned in paragraph-7 of the case diary. He admitted that no material object was found or seized from the place of occurrence, that no vomit or related material was noticed either at the spot or on the body or clothes of the deceased,



and that no footprints were found as the place was a paved road, though such facts were not mentioned in the case diary. He further admitted that no satisfactory evidence regarding the place of vomiting was found, no inquiry was made regarding the school of the deceased or the source of the alleged sugar, and also mother of deceased (PW-5) was not separately questioned on these aspects. He also stated that the house of the accused was found closed and the accused had absconded, that shops were closed, and that despite a crowd of about 100–200 persons, no independent witness from the crowd was examined except those whose statements were recorded. He further admitted that he did not investigate any prior dispute in detail, did not ascertain the criminal antecedents of the accused, and did not arrest the accused, but denied the suggestion that he had failed to conduct a proper investigation.

**31. PW-10** is Pankaj Kumar, who is Investigating Officer of this case, deposed that on 22.04.2012 he took over the investigation of Case No. 29/08 of Saur Bazar (Patarghat O.P.) and, upon assuming



charge, perused the case diary and continued the investigation already conducted. He deposed that the viscera examination report of the deceased Ashish Kumar was forwarded to the Court on 13.09.2012 and the accused, Chandan Devi, was arrested with the assistance of police personnel of Bharrahi O.P., Madhepura, along with lady chowkidar Usha Devi and was sent to judicial custody. He further stated that, pursuant to directions received from senior police Officers, he submitted Charge Sheet No. 431/12 dated 31.10.2012 against the accused under Sections 302 and 328 IPC and identified the informant present before the Court.

**31.1** Upon cross-examination, he stated that after taking charge of the investigation, he had perused the case diary but did not revisit the place of occurrence. He further deposed that the accused belongs to the Sah caste and that since both parties resided in close proximity with a common household arrangement, there existed constant friction between them, he admitted that although he inspected the house of the accused. he did not note the



existence of any shop therein. He stated that the accused was arrested from her house under Bharrahi O.P. He also admitted that no investigation was conducted to ascertain the school attended by the deceased or his class and that no defence version of the complainant was recorded.

**32. PW-11** is Aslam Ansari, who is also Investigating Officer of this case, deposed that he took over the investigation on 11.07.2009 and, during the course thereof, ensured that the sealed viscera and sealed packet of the deceased Ashish Kumar were forwarded to the Forensic Science Laboratory, Patna, as reflected in the case diary. He further deposed that on 06.06.2010 he was transferred from Patarghat O.P., after which he handed over the charge of investigation to his successor.

**32.1** Upon cross-examination, he admitted that upon perusal of the case diary, he found that the viscera had not been sent earlier for examination, whereupon he obtained necessary orders from the Chief Judicial Magistrate and took steps for its dispatch. He stated that he coordinated with the staff of Sadar Hospital, Saharsa, arranged the



required documents and container for the viscera, and submitted an application to facilitate its transmission to the Forensic Science Laboratory. He further admitted that apart from sending the viscera, he did not undertake any further substantive investigation and the viscera was forwarded after a considerable delay of about one year from the date of the occurrence.

### **Our Findings**

**33.** Upon careful consideration of the entire evidence on record, this Court finds that the prosecution case rests primarily on the alleged oral dying declaration of the deceased child and the testimonies of related and interested witnesses. It is an admitted position that no witness has actually seen the accused administering any poisonous substance to the deceased, and therefore the case is essentially one based on circumstantial evidence. The prosecution has relied upon the statements allegedly made by the deceased to his parents and other villagers immediately after the occurrence, attributing the act to the accused. However, the evidentiary value of such oral dying



declaration does not inspire full confidence in the facts and circumstances of the present case. The statements attributed to the deceased suffer from material inconsistencies, particularly with respect to his physical and mental condition at the relevant time, as one witness has stated that the child was unable to speak clearly, while others claim that he was in a position to narrate the occurrence. Moreover, no effort was made to have the dying declaration recorded by a doctor or any independent authority, which further weakens its reliability.

**34.** The medical evidence also fails to support the prosecution case in any conclusive manner. The doctor who conducted the post-mortem examination has clearly opined that the cause of death could not be ascertained, and though viscera was preserved for chemical examination, there is no cogent material on record to establish that any poison was detected therein. In absence of a definite medical opinion indicating death due to poisoning, the very foundation of the prosecution story becomes doubtful.

**35.** Further, a very material and fatal lapse in



the prosecution case is that the alleged incriminating substance, namely the "sugar" said to have been given to the deceased, was neither seized by the Investigating Officer nor sent for forensic examination. The prosecution case is entirely based upon the allegation that poison was mixed in the said sugar; however, in absence of seizure and chemical analysis of the same, there is no scientific or corroborative evidence to establish that any poisonous substance was in fact administered alongwith sugar. PW-3 claiming a chance eye-witness to the occurrence also stated that only sugar was given to deceased by appellant. He did not claim to the extent that he saw appellant to mix anything foreign to the sugar. The Investigating Officer has categorically admitted that no material object was seized from the place of occurrence. This omission strikes at the root of the prosecution case, as the best possible evidence has been withheld, thereby rendering the allegation of administration of poison highly doubtful.

**36.** Additionally, the investigation in the present case suffers from several other serious lapses. No sample of



vomit or any related material was collected from the place of occurrence or from the body/clothes of the deceased. No effort was made to verify the source of the alleged poison or to establish the existence of the shop from where the substance was allegedly administered. The place of occurrence itself has not been satisfactorily established. Despite the presence of a large number of villagers at the spot, only selected witnesses were examined. There was also an inordinate delay of about one year in sending the viscera for forensic examination, which further casts doubt on the integrity of the investigation. Such lapses materially weaken the prosecution case and create serious gaps in the chain of circumstances.

**37.** The motive alleged by the prosecution, namely a prior dispute regarding sale of a "soap of compromised quality" appears to be weak and not of such a nature as would ordinarily lead to the commission of such a grave offence. Motive, in any case, cannot substitute proof and must be supported by reliable evidence, which is lacking in the present case. Further, one of the material witnesses



has turned hostile and has not supported the prosecution case, even suggesting false implication due to land dispute, which further creates doubt.

**38.** In a case based on circumstantial evidence, it is well settled that the chain of circumstances must be complete and must unerringly point towards the guilt of the accused. In the present case, the chain is clearly incomplete. The prosecution has failed to establish that the deceased consumed any poisonous substance, much less that such substance was administered by the accused. The essential ingredients of the offences under Sections 302 and 328 IPC have thus not been proved beyond reasonable doubt.

**39.** Hence, appeal stands allowed.

**40.** Accordingly, the judgment of conviction dated 21.10.2019 and order of sentence dated 22.10.2019 passed by the learned Presiding Officer, Fast Track Court, Saharsa, in Sessions Trial Case No. 3/13/2102/14 arising out of Saur Bazar P.S. Case No. 29/2008, is hereby set aside.

**41.** Appellant namely, Chandan Devi @ Chanda Devi @ Nunu Devi @ Nunu is in custody. She is directed to



be released forthwith, if not required in any other case. Fine if any paid, be returned to appellant forthwith.

**42.** Office is directed to send back the trial court records along with a copy of this judgment to the trial court, without delay.

**( Chandra Shekhar Jha, J.)**

**Bibek Chaudhuri, J:- I agree.**

**(Bibek Chaudhuri, J.)**

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