IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1037 of 2017

Arising Out of PS. Case No.-52 Year-2014 Thana- KARPI District- Jehanabad

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Bhola Paswan Son of Lakhichand Paswan, Resident of Village-Keraunja, P.S.-Karpi Bansi O.P., District-Arwal.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

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Appearance :
For the Appellant/s : Ms. Vaishnavi Singh, Advocate
For the State : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 01-12-2023

Heard Ms. Vaishnavi Singh, learned Advocate for the appellant and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State.

2. The appellant has been convicted under Section 302 of the I.P.C. and has been sentenced to undergo rigorous imprisonment for life, to pay a fine of Rs. 20,000/- and in default of payment of fine, to further suffer S.I. for one year under Section 302 IPC in S. Tr. No. 342/2014-46/2015 (arising out of Karpi P.S. Case No. 52/2014) corresponding to G.R. No.

673/2014) *vide* judgment and order dated 29.05.2017/ 31.05.2017 passed by the learned 5th Additional Sessions Judge, Jehanabad.

3. One Parmeshwar Thakur is said to have been killed at the hands of the appellant.

4. The appellant worked as a labourer in the village, who killed the deceased because his wife was taken away by the deceased for the last six months. These facts can be gathered from the FIR lodged by one of the sons of the deceased viz. Sunil Kumar, who has been examined as PW-7. In his fardbeyan which was recorded by S.I. Kameshwar Singh (PW-8) at 11:00 A.M. on 23.03.2014, he has alleged that while his father (deceased) was coming back from the field after defecating, he was assaulted on his head by means of a *lathi* by the appellant. This happened in front of the house of one Govind Thakur who though has not been examined in the trial but his wife has come to the witness-stand to depose that she had seen the deceased

lying injured at the place of occurrence. No sooner had PW-7 reached the place where his father lay injured, he died. Thereafter, the F.I.R. was recorded.

5. In the fardbeyan, however, PW-7 has made a very specific statement that the appellant had killed the deceased for the reason that he was suspected to have eloped with the wife of the appellant. For a son to make such statement in the fardbeyan, it means a lot and not just a casual statement.

6. However, to our surprise, we have found that this motive of the appellant for killing the deceased has been completely abandoned during the trial.

7. Based on the fardbeyan of PW-7, a case *vide* Karpi (Bansi) P.S. Case No. 52/2014 dated 23.03.2014 was registered for investigation for offence under Section 302 of the IPC.

8. The police after investigation submitted chargesheet whereupon cognizance was taken and the appellant was put on trial.

9. The Trial Court, after having examined eleven witnesses on behalf of the prosecution, has convicted the appellant as aforesaid.

10. Ms. Vaishnavi Singh, learned Advocate for the appellant has submitted that though almost all the witnesses have claimed to have seen the appellant killing the deceased but from their deposition at the trial, it becomes very evident that they had not seen the actual part of the assault and had only seen the deceased lying injured in the field across the road and opposite to the house of Govind Thakur, who has not been examined at the trial.

11. Secondly, it has been urged that all the witnesses are directly related to the deceased and the possibility of their having made tutored statement cannot be ruled out. She has also urged that even the place of occurrence could not be proved.

12. The first I.O. of the case viz. Kameshwar Singh/PW-8 found that the dead body was lying in a

field and not on the road in front of the house of the Govind Thakur as has been narrated in the FIR.

13. Though the motive introduced by the son of the deceased (PW-7) has conveniently been abandoned, nonetheless, it provides a clue for blaming the appellant for the death of the deceased.

14. Lastly, it has been submitted that no incriminating circumstance was put to the appellant for him to explain away his defence.

15. As opposed to the aforenoted contentions, Mr. Abhimanyu Sharma, learned Additional Public Prosecutor has argued that it is a matter of common knowledge that people do go out in the morning in the countryside for defecating and therefore, the possibility of the deceased having been assaulted by the appellant being witnessed by many cannot totally be side-lined.

16. The witnesses may not have specifically made such statement that they saw the actual part of the assault but the manner in which the narration has

been made by each of them, it would clearly point out that all of them saw the actual part of the assault but from varying distances. There is nothing on record, he has argued which would have obstructed the view of the witnesses.

17. True it is, Mr. Sharma argues, that the three Investigating Officers of this case have not investigated the case properly but the law as it stands today is that for the lapses on the part of the Investigating Officer, and unless such lapses would be prejudicial to the case of the defence, a criminal prosecution cannot be jettisoned.

18. Lastly, it has been submitted that the motive may not be all that relevant in a criminal case as the perpetrator of the crime can only talk with certainty about his motive or reason for executing the act of murder.

19. Be that as it may, except for a brief and a sketchy statement in the fardbeyan by the son of the

deceased about his elopement with the wife of the appellant being the reason for the attack, nowhere has it been brought on record either by way of investigation or the deposition of other witnesses. If the story of the deceased having run away with the wife of the appellant would have been true, the wife of the deceased would not have supported the prosecution case as she would be the most aggrieved party. Thus, the entire motive on which the defence has harped upon is thrown to the background and it would be more appropriate to refer to such motive in the fardbeyan as the rumour heard by PW-7 and others and nothing more. There has been no confirmation of the factual aspect of the charge of the deceased having run away with the wife of the appellant.

20. Lastly, it has been urged by Mr. Sharma that under Section 313 of the Code of Criminal Procedure, incriminating materials are to be pointed out and put to the accused. That there was a rumor about the appellant having killed the deceased because his wife

was taken away by the deceased was not confirmed during the investigation or during the trial and therefore, there was no necessity of putting this fact to the appellant. Under such circumstances also, even if the questions put to the appellant under Section 313 Cr.P.C. was absolutely brief, sketchy and laconic but that itself would not render the conclusion arrived at by the Trial Court to be bad in the eyes of law.

21. After having heard the counsel for the parties and after having examined the records of the case in some detail, we have been able to notice that all the witnesses who have deposed against the appellant are closely related to the deceased and the informant.

22. Rajendra Thakur (PW-1) and Dwarika Thakur (PW-3) are the nephews of the deceased, whereas Sudhir Kumar (PW-2) and Sunil Kumar (PW-7)/ (informant) are the sons of the deceased. Ganesh Thakur (PW-4) is the brother of the deceased, whereas Muni Devi (PW-6) is the wife of the deceased. Only one

person who does not appear to be related to the deceased or the informant is Siyamani Devi (PW-5), who as we have noted, is the wife of Govind Thakur, in front of whose house the deceased was assaulted by the appellant. She being a person from the immediate neighbourhood of the place of occurrence reached the place where the victim lay injured. She was perhaps the first of the persons who came to the place of occurrence. It was only after her that Rajendra Thakur (PW-1) had come to the P.O. This fact stands confirmed by the deposition of Rajendra Thakur (PW-1) as well, who claims to have reached the P.O. after PW-5. If PW-5 had not seen the actual part of the assault, it is quite likely that PW 1 also would not have seen any part of the assault. He does not even claim to have seen the appellant fleeing away from the P.O.

23. Why was such statement then made by him?

24. Was it because of the rumour afloat about the deceased having eloped with the wife of the appellant.

25. In any view of the matter, even if PW 1 is a signatory to the F.I.R. as also the inquest report, there is no certainty that he had witnessed the occurrence himself but was only making up a story because of the background facts and that only the appellant would have enmity with the deceased. That he had counter signed the FIR and the Inquest report is again no ground to assume that he had seen the occurrence. The occurrence had taken place between 7:30 to 8:00 A.M. and the F.I.R. was registered at 2:30 P.M. in the day. Sufficient time had elapsed between the occurrence and its report for the parties to confabulate and come up with a common set of accusation for lodging the case.

26. The other noticeable factor is that none of the witnesses, including the wife of the deceased, have

even remotely suggested that the deceased was having any affair with the wife of the appellant.

27. All this story, therefore, remained under-wraps.

28. The *lathi* which was used by the appellant for killing the deceased has not been recovered. The appellant had surrendered to the process of law on the same day.

29. We have also examined the deposition of all other witnesses and on comparison with the statements of other witnesses *inter-se*, it would appear that only Siyamani (PW-5) had reached the place of occurrence as one of the first witness of the offence. All others came later than her.

30. Thus, we find force in the submission of the appellant that perhaps nobody had seen the occurrence and it was only because of the impression gathered by all in the family of the deceased that the appellant had

some cause of grievance against the deceased, that the name of the deceased was taken by all of them.

31. Kameshwar Singh (PW-8) had visited the place of occurrence and had prepared the inquest report. The dead body was found lying in a field which was in front of the house of Govind Thakur. No effort was made by the appellant to take the statement of other villagers or to learn about the motive for killing the deceased, which motive was introduced in the fardbeyan of the son of the deceased.

32. Such fact could not have been taken lightly.

33. If it were a fact, it was imperative on the I.O. to locate the whereabouts of the wife of the appellant or to find out whether for the last six months, the wife of the appellant had been residing with the deceased. If this were so, where was the place where the wife of the appellant was located?

34. All these facts were necessarily to be investigated and the complete silence of the

Investigating Officer on these important issues definitely renders the prosecution case absolutely weak and shaky so far as the reason for committing the murder was concerned.

35. Similarly, the other Investigating Officers viz. Sudhir Kumar and Murlidhar Shah took up the investigation in succession. Sunil Kumar (PW-7) though recorded the statement of the wife of the deceased as also the other family members of the deceased but no effort was made by him to know about the occurrence from anyone of the villagers including the person, whose house was situated across the road and very near to the place of occurrence. Murlidhar Shah (PW-11) has only submitted the chargesheet.

36. The manner in which the case has been investigated does not give any clear picture of the facts. A very cavalier approach was adopted by the investigators.

37. Mr. Sharma, learned counsel for the State may be somewhat justified in suggesting that a motive which could not be proved during trial and on which the prosecution does not wish to rely upon, may not be communicated to an accused in the dock under Section 313 of the Code of Criminal Procedure, but this appears to be an over simplification of the facts.

38. The appellant is apparently a labourer in the village. The deceased is not a co-labourer but a farmer. Unless it was ascertained that the appellant had any reason to attack the deceased, the evidence collected in the case would remain insufficient. If it were a dispute over wages or any other fact, that would have been an important forging link in the set of evidence. When the son of the deceased knew about the charge of the deceased having taken away the wife of the appellant, it was a very important circumstance, in our estimation, which formed the girdle on which the prosecution could have successfully rested upon. Even on question of law,

it is apodictic that motive may not assume relevance but if introduced, it has to be taken to a logical conclusion.

39. It appears that the prosecution has chosen to completely overlook the original motive assigned for the act of murder.

40. Seen in this background, merely asking two questions to the appellant in the dock that "*you have killed the deceased*" means nothing.

41. The law with respect to the requirement under Section 313 of the Code of Criminal Procedure is well settled and has become trite by now.

42. The sole purpose of putting the incriminating materials to an accused is to elicit his response and also to guarantee him a fair chance to defend himself. This is in recognition of the principles of *audi alteram partem*.

43. The Trial Judge establishes a direct dialogue with the accused. If any point in the evidence assumes importance and can be read against the accused on

which conviction could be based, it has to be put to the accused to hear out his response and explanation.

44. Even the evidence collected on the inculpatory confession of an accused has been held to be necessary to be put to the accused unless it can be shown that no miscarriage of justice or prejudice would be caused by not putting such facts to the accused [refer to ***S. Harnam Singh vs. State of Delhi Administration 1976 (2) SCC, 819***].

45. In ***Raj Kumar @ Suman vs. State (NCT of Delhi) AIR 2023 SC 3113*** (Cr. Appeal No. 1471 of 2023) (arising out of SLP Cr. No. 11256 of 2018) the Supreme Court has summarized the consistent law laid down by the Supreme Court with respect to the provisions contained in Section 313 of the Code of Criminal Procedure.

46. They are as follows:

I. The Trial Court is under an obligation to put each material circumstance in evidence against the

accused specifically, distinctively and separately to the accused;

II. The object is to enable the accused to explain such circumstances appearing against him in the evidence;

III. Any failure to put such material circumstance to the accused would amount to a serious irregularity which would have the potency of vitiating the trial. However, if not putting such circumstances to the accused does not result in failure of justice, the defect is only curable.

47. The Supreme Court has also clarified as to the test to be applied for determining whether any prejudice has been caused. If because of the omission, the main reason for the cause of the occurrence cannot be commented upon by an accused, it definitely would cause prejudice to him.

48. In our estimation, not putting to the appellant the very reason for his having committed the murder is

an omission which is not curable. If such a question was put to the appellant, he may have explained that this charge is absolutely groundless and that his wife is still residing with him and not with the deceased.

49. On an overall conspectus of the facts of this case, we find that the witnesses have not made true assertion that they saw the actual part of the assault. The deceased lay dead in the field with blood coming out of his ears. The post-mortem report though confirms that the death was homicidal but who committed it remains unknown. That the appellant would not have been a sitting duck at his house, has also to a large extent convinced us about his conduct in not running away from the village after committing the crime.

50. There was no dispute between the appellant and the deceased, which fact stands confirmed in the deposition of the witnesses. It is quite unlikely that the deceased was attempted to be mugged by the appellant.

51. Under such situation, the only reason for the attack would have been the unholy relationship between the deceased and the wife of the appellant. This was the most important circumstance for which an explanation ought to have been sought from the appellant in dock.

52. As we have noticed, this lapse remains incurable.

53. For the aforenoted reasons, we find that the trial proceedings to be completely vitiated.

54. The appellant has to be given the benefit of doubt.

55. We have been informed that the appellant has remained in jail for nine years by now.

56. He is acquitted of the charge of murder levelled against him.

57. The appeal succeeds.

58. The appellant is directed to be released from jail forthwith, if not detained or wanted in any other case.

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

60. The records of this case be returned to the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Nani Tagia, J)

Ranjeet/-Krishna

AFR/NAFR	NAFR
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