

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 1022 of 2012

Arising Out of PS. Case No.-15 Year-1996 Thana- Tandwa District- Aurangabad

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1. Laxman Paswan S/o Late Pragas Paswan
 2. Janeshwar Paswan S/o Late Isari Paswan
 3. Chhatan Paswan @ Chhatanz Paswan S/o Janeshwar Paswan
 4. Murari Paswan S/o Satyanarain Paswan
 5. Kedar Paswan S/o Late Haricharan Paswan
 6. Fekan Paswan S/o Laxman Paswan
- All resident of Village - Subedar Itawan, P.S. Tandwa, District Aurangabad.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

- For the Appellant No. 4 & 6 : Sri Rajesh Kumar Singh, Advocate
Sri Rana Pratap Singh, Adv.
Sri Dharmendra Kumar Singh, Adv.
- For the Appellant No. 5 : Sri Mukesh Kumar Singh, Adv.
Sri Rajeev Kumar Singh, Adv.
- For the Appellant No. 1 to 3 : Sri Anil Singh, Amicus Curiae
- For the State : Sri Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 22-01-2019

All the aforesaid six appellants were convicted and sentenced in Sessions Trial No. 325 of 1997/Tr. No. 106 of 2010. The appellants by judgment dated 27-09-2012 have been convicted for commission of offence under Sections 147, 302/149 of the Indian Penal Code, 1860 (hereinafter referred to as the 'I.P.C.') and by order dated 01-10-2012, all the appellants under Section 147 of the I.P.C. have been sentenced to undergo rigorous imprisonment for one year. By the said order i.e. order dated



01-10-2012 under Section 302/149 of the I.P.C., they have been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 8,000/- (eight thousand) each. In default of payment of fine, they have been directed to further undergo imprisonment for eight months. The judgment of conviction and sentence was passed by Sri Vijay Kumar Pandey, learned Adhoc Additional Sessions Judge - II, Aurangabad (hereinafter referred to as the 'Trial Judge') in Sessions Trial No. 325 of 1997/Tr. No. 106 of 2010 (arising out of Tandwa P.S. Case No. 15 of 1996).

2. Short fact of the case is that on 28-05-1996 at 04.30 hrs., the Sub-Inspector of Police-cum-Officer incharge of Tandwa Police Station namely S.K.Jha (not examined) recorded *fardebayan* of Saman Paswan (P.W.6) son of late Ramdeo Paswan (deceased). The said *fardebayan* was recorded near the door of the informant. In the *fardebayan*, the informant disclosed that on the preceding night i.e. on 27-05-1996 at about 08:00 PM, he alongwith other family members were sitting outside his door and having discussion, in the meanwhile, aforesaid six appellants arrived there. At the same time, from eastern side, five unknown accused persons, amongst them, three were carrying gun in their hand and other two were without any arms wearing लुंगी-गंजी (*loongi-ganji*) arrived there. Laxman Paswan (appellant no. 1) then pointing out to Ramdeo



(deceased) said that he was the person, who had put obstacle in the marriage of son of Satnarayan and due to which, his marriage could not be solemnized. He exhorted to carry बुढ़वा (*budhwa*) and thereafter, the informant and all the family members started to request accused persons not to do the same, however; the accused persons without adhering to their request caught hold of बुढ़वा (*budhwa*) i.e. father of the informant and carried him forcibly towards south-eastern अहरा (*ahra*) of the village. The informant started to follow them, however; he was scolded by the accused persons. After some time, the informant alongwith other villagers went near the field of Vishwanath Singh and from opposite अहरा (*ahra*), the informant saw that his father was squirming in the field of Vishwanath Singh. Thereafter, the informant, with the help of others, lifted his father and carried him to his house. After arrival, he (Ramdeo) died in his house. The informant claimed that the five unknown accused persons, who had come there, can be identified after seeing them, since it was moonlight and near the door, light of लालटेन (*lalten*) was also there. The informant further stated that the aforesaid accused persons of the village were repeatedly threatening them for dire consequences. The said *fardebayan* was read over to him and after finding it correct, he put his L.T.I. (Left Thumb Impression) on the same.



3. On the basis of said *fardebayan*, on the same date i.e. on 28-05-1996 at 06:00 AM, a formal F.I.R., vide Tandwa P.S. Case No. 15 of 1996, was registered for offence under Sections 147, 148, 149, 302, 120(B) of the I.P.C. against all the aforesaid appellants and five unknown accused. After registering the case and during investigation, accusation was found true against accused persons and as such, on 02-09-1996 chargesheet was submitted against all the six appellants. Thereafter, on 17-09-1996, learned Chief Judicial Magistrate, Aurangabad took cognizance of the offence and case was committed to the court of sessions on 07-12-1996. On 31-05-1997, charge was jointly framed against all the appellants under Sections 147 & 302/149 of the I.P.C.

4. To prove its case on behalf of the prosecution, altogether ten witnesses were examined. Out of ten witnesses, P.W.1 Budhan Paswan (son of the deceased), P.W.2 Kalawati Devi (wife of P.W.1 and daughter-in-law of deceased), P.W.3 Dev Kumari Devi (wife of informant) and P.W.6 Saman Paswan (informant and son of the deceased) were examined as eye-witnesses to the occurrence. P.W.4 Lallu Mehta (co-villager) was examined to the extent that he had seen the deceased while he (deceased) was squirming in the field of Vishwanath Singh. P.W.5 Vashisth Narayan Singh, an Advocate clerk, is a formal witness,



who has proved formal F.I.R., which was marked as Ext.1. P.W.9 Pradeep Paswan is yet another relative of the informant, who has deposed to the extent that he had seen the deceased while squirming near the field of Vishwanath Singh. P.W.10 Chhavindra Singh is a witness to the inquest report and he proved his signature on the inquest report, which was marked as Ext.3. P.W.8 Dr. T.N. Shukla on 28-05-1996 was posted as Medical Officer, Sadar Hospital, Aurangabad and he conducted *post-mortem* examination on the dead body of the deceased and proved the *post-mortem* report, which has been marked as Ext.2. P.W.7 Shiv Sharan Mehta (co-villager), since has not supported the prosecution case, was declared hostile. In the case, investigating officer was not examined.

5. Sri Rajesh Kumar Singh, learned counsel assisted by Sri Rana Pratap Singh, learned counsel has appeared on behalf of appellant no. 4 & 6, whereas Sri Mukesh Kumar Singh, learned counsel has appeared on behalf of appellant no. 5. Since appellant no. 1 to 3 were not being represented, the Court, considering the fact that in the case, occurrence had taken place in the year 1996, requested Sri Anil Singh, learned counsel to assist the Court as *Amicus Curiae* and as such, Sri Anil Singh has argued the case on behalf of appellant no. 1 to 3 as *Amicus Curiae*.



6. Sri Rajesh Kumar Singh, learned counsel for the appellant no. 4 & 6, after placing entire evidence, has argued that the prosecution has not been able to establish its case beyond all reasonable doubt. He submits that in the case, the prosecution has not been able to prove even the place of occurrence and as such, it was case of acquittal, but the learned Trial Judge has incorrectly passed the judgment of conviction and sentence.

7. Sri Mukesh Kumar Singh, learned counsel appearing on behalf of appellant no. 5, adopting the argument of Sri Rajesh Kumar Singh, learned counsel for appellant no. 4 & 6, has argued that appellant no. 5 alongwith others were incorrectly held guilty by the learned Trial Judge. He has argued that there is apparent inconsistency in the evidence of witnesses.

8. Sri Anil Singh, learned *Amicus Curiae* submits that the prosecution had initially come out with a case of motive that the deceased had put obstacle in the marriage of son of Satya Narayan and this was the reason that the deceased was forcibly taken by the accused persons, he was dragged for a long distance on a rough surface and thereafter, it was alleged by the prosecution that the deceased was done to death by strangulation. According to learned *Amicus Curiae*, if for the time being the prosecution case is believed that the deceased was strangulated in the field of



Vishwanath Singh, which was at much distance, there was no reason for carrying the injured to his house and occurring of his death in the house. He submits that in case of strangulation, there was hardly any possibility to remain alive even for more than two minutes. He further submits that during *post-mortem* examination also, the cause of death has been noticed as 'Asphyxia' and as such, if the prosecution case, to the extent of place of occurrence in the field of Vishwanath Singh, is treated as true, the death of the injured at his house after much delay itself raises a serious question on the prosecution case.

9. It has also been argued by learned *Amicus Curiae* that in the case, only close family members have come forward to support the prosecution case, however none of the independent witnesses have come forward to support the prosecution case. It has been further argued that in the case, the motive, which was initially alleged to be reason for occurrence, was changed subsequently and during evidence, witnesses were consistent on the point that none had put any obstruction or obstacle in the marriage of son of Satyanarayan. It has also been argued that informant side as well as prosecution side are closely related. It was submitted that on the basis of evidence, it appears that appellant no. 1 (Laxman Paswan) was putting some obstacle in



respect of a public land and after death of the deceased, subsequently a false case was fabricated and all the appellants were arrayed as accused.

10. According to Sri Anil Singh, learned *Amicus Curiae*, there is no explanation of delayed information given to the police. As per prosecution case, father of the informant was forcibly dragged by accused persons, who were carrying lethal weapon in the evening at 08:00 PM, however; the *fardebayan* was shown to be recorded in the morning at 04:30 AM. Non-examination of investigating officer has seriously prejudiced the prosecution case, since though attention of some of the witnesses were drawn to their previous statement, in absence of investigating officer, they failed to get contradiction, which has seriously prejudiced the case. On aforesaid ground, it has been argued that the judgment of conviction and sentence is liable to be set aside.

11. Sri Ajay Mishra, learned Addl. Public Prosecutor has vehemently opposed the appeal and he has placed reliance on the evidence of P.W.6, who is informant of the case. He submits that informant is consistent on the point as to how his father was forcibly dragged by the accused persons and thereafter strangled in the field of Vishwanath Singh.



12. Besides hearing learned counsel for the parties, we have minutely examined the entire evidence on record. However, before proceeding, it would be necessary to cursorily refer to the evidence of witnesses.

13. In the case, Saman Paswan, who is informant and son of the deceased, was examined as P.W.6. In his evidence, he stated that on 27-05-1996 at 08:00 PM, occurrence had taken place. At that very time, he was near his door with his father Ramdeo Paswan (deceased), brother Budhan Paswan, his wife Deo Kumari Devi (P.W.3) and Kalawati Devi (wife of P.W.1). At that very time, there was a lantern, which was burning. It was moonlight night. He stated that all the aforesaid appellants alongwith five unknown accused persons, amongst them three were carrying gun, arrived near his door and thereafter, Laxman (appellant no. 1) exhorted that Ramdeo Paswan had unsettled the marriage of son of Satya Narayan and thereafter, he said to carry the father of informant for the purpose of killing. The informant and other family members started to request the accused persons not to do that, however they (accused) proceeded and the informant followed the accused persons. His father was carried to the field of Vishwanath Singh, however unknown accused persons stopped the informant from following them and in the field of



Vishwanath Singh, by pressing his neck, he was done to death and accused persons fled away. The informant said that he remained there. Family members went to the village and raised alarm, thereafter, some villagers arrived there. Subsequently, all of them lifted the injured and carried him to his door, where he died. In paragraph - 5 of his examination in-chief, P.W.6 stated that accused persons were threatening them since earlier. He said that Darogaji recorded his *fardbeyan*, on which, he put his signature and as a witness, Sarpanch Chhavindra Singh (P.W.10) had stood as witness. In paragraph - 7 of his cross-examination, he deposed that Satya Narayan was his uncle, in view of village relation and also his caste-man. Satya Narayan is the father of Murari (appellant no. 4). On being asked as to where his son's marriage was settled, he did not give any satisfactory reply. In paragraph-12 of his cross-examination, he stated that his father was taken by way of dragging. He was dragged for about 20-25 bamboos i.e. almost more than 300 feet. In paragraph-16, he further stated that all the accused persons had sat on the chest of his father and pressed his neck. Again in paragraph-17, he stated that due to dragging, the back of the deceased had received abrasion injury. He was given suggestion that due to land dispute, false case was instituted, however he denied the suggestion. In paragraph-19, he



stated that his *fardebayan* was recorded by दारोगाजी (*Darogaji*) in his house, however he had gone to police station and had explained all the facts to the दारोगाजी (*Darogaji*), but it was not recorded by the police there. In the morning, police came alongwith him. Alongwith informant, chowkidar Buddhan and Matuk Singh had also gone to police station and they all had explained regarding the occurrence to the officer in-charge.

14. On examination of the evidence of informant i.e. P.W.6, two facts are evident - (1) he stated that the deceased, while was being dragged, had received injuries on the back side and (2) in his evidence he has not elaborately stressed regarding the motive, which stand was taken in his initial version in the *fardebayan*.

15. P.W.1 Budhan Paswan, P.W. 2 Kalawati Devi and P.W.3 Deo Kumari Devi all in paragraph 1 & 2 of their evidence have consistently deposed, as deposed by P.W.6 (informant) in his evidence. It appears that in examination in-chief, their evidence is parrot type, however in their cross-examination, many facts have emerged, which create serious doubt on the prosecution case.

16. P.W.1 Budhan Paswan in paragraph-5 of his cross-examination has categorically stated that Laxman (appellant no. 1) had not created any situation for non-solemnization of the



marriage, whereas in the *fardbeyan*, initial version was obstacle being created by the deceased in the marriage of the son of Satya Narayan, who was brother of appellant no. 4. This witness in paragraph - 9 of his cross-examination has further stated that his father was carried by dragging. He was dragged up-to आहर (*aahar*), which was about a distance of more than 300 feet. In paragraph -10, he further stated that the land from his house to the place of occurrence was completely rough. However, on examination of the evidence, particularly the evidence of doctor, who conducted *post-mortem* examination, and *post-mortem* report, no such injuries were found on the person of the deceased, only mark on neck of deceased was found. His attention to his previous statement was drawn in paragraph-18 of his cross-examination, however due to non-examination of investigating officer, the said contradiction could not be corroborated.

17. Similarly P.W.2 Kalawati Devi (daughter-in-law of deceased & wife of P.W.1) though in examination in-chief has stated like P.W.1, in her cross-examination, she stated that she was not aware as to whether the deceased was instrumental in respect of creating hurdle in solemnization of marriage of son of Satya Narayan. This fact has come in paragraph – 6. In paragraph-12 of her cross-examination, she further stated that she with her गोतनी



(*gotni*) had gone for calling chowkidar, but she had not disclosed the name of accused persons to the chowkidar. She further stated that in the whole night, she did not disclose the name of accused persons to anyone. This also raises doubt on the credibility of this witness. It appears to be not normal that after the occurrence, once this witness had witnessed entire occurrence, why she had not disclosed the name of accused persons to the chowkidar or any other person.

18. P.W.3 Dev Kumari Devi has also supported the prosecution case regarding carrying of deceased by way of dragging, however no such injury was found on the person of deceased at the time of *post-mortem*. Attention of this witness was also drawn to her previous statement, which fact has been stated in paragraph 8, 9 and 10 of her cross-examination.

19. P.W.4 Lallu Mehta, an independent witness and co-villager, stated that in the night of the date of occurrence on hearing हल्ला (*hulla*), he went to the field of Vishwanath Singh and he had seen the deceased while squirming in the field of Vishwanath Singh, who was carried to his house. In paragraph - 2 of his evidence, he stated that after search, he reached the place of occurrence and at that very time, there was 4-5 persons. In paragraph-3 of his cross-examination, he further stated that he was



not aware as to how Ramdeo was killed. For whole night, he had not got any information regarding the involvement of any of the accused. The evidence of P.W.4, who is independent witness, suggests that even though, the injured was in the field and this witness arrived there, none was aware of involvement of any of the accused persons.

20. P.W.5 Vashisth Narayan Singh, an Advocate clerk, has simply proved the formal F.I.R., which was marked as Ext.1.

21. P.W.9 Pradeep Paswan, who is one of the relative of informant side, has come out with a new case, as if, the deceased was done to death by putting a wood on his neck and he stated that he had noticed injuries on the back side of the deceased. While he reached, the injured was not in a position to speak. The injured was carried to his house and after 10-15 minutes, he died. His attention was also drawn to his previous statement in paragraph - 2 of his cross-examination, but in absence of investigating officer, it could not be corroborated, however in this paragraph, he stated that deceased was brother of his grandfather and he further stated that till the date of his evidence, he was not aware as to who was involved in the occurrence.

22. P.W.10 Chhavindra Singh is a witness to the inquest report and he proved his signature on the inquest report, which was



marked as Ext.3. He stated that he had seen the dead body in the field of Tunna Singh. Ofcourse, inquest report was not formally got exhibited, on examination of inquest report, particularly column - 9 of the inquest report, it is evident that inquest report was prepared in the field of Tunna Singh, which was in front of the house of the deceased.

23. It is necessary to indicate that it is consistent case of the prosecution that the father of the informant was dragged from his house to the field of Vishwanath Singh, where his neck was pressed and in injured condition, from the field of Vishwanath Singh, he was carried to the house of the informant and in that situation, the finding of the dead body in the field of Tunna Singh puts a big question on the credibility of the prosecution case.

24. Dr. T.N. Shukla on 28-05-1996 was posted as Medical Officer in Sadar Hospital, Aurangabad and on the same date, he conducted *post-mortem* examination on the dead body of the deceased and noticed following facts:-

“Mouth was open and eyes closed. There was thread on his neck. There was also depressed mark on upper part of the neck situated above the thyroid cartilage encircling the neck obliquely, completely and simple.

On dissection:-

The subcutaneous tissue under the ligature was dry, white and listening. The thyroid cartilage was fractured but hyoid bone intact. Trachea found red and congested. Epiglottish congested. Right side of the heart, pulmonary artery and vein were full of dark fluid blood and left side empty.



Time elapsed since death & P.M. held – within 12 to 24 hrs.

Opinion – The death was caused by Asphyxia.”

25. He proved the *post-mortem* report, which was marked as Ext.2. In *post-mortem* report, he has categorically indicated that death occurred due to Asphyxia. The evidence of P.W.8 as well as *post-mortem* report further makes it clear that death was not occurred due to strangulation, rather it happened due to tying of rope or any other material on the neck, whereas it is the case of the prosecution that neck of deceased was pressed by almost all the accused persons. The *post-mortem* report further makes it clear that the doctor had not noticed any sign of fingerprint on the neck of the deceased, which belies the evidence of P.W.6 (informant). He has also not noticed any injury on other parts of the body of deceased.

26. On examination of record, it further appears that despite the fact that formal F.I.R. was lodged on 28-05-1996, without any explanation of delay, the F.I.R. was received in the Court on 30-05-1996.

27. Accordingly, on examination of entire evidence, it would be difficult for the Court to approve the judgment of conviction and sentence. The Court is in agreement with the submission of learned counsel for the appellants that had it been a case of strangulation, the death of the deceased would have



occurred instantaneously within two minutes, however the prosecution has come out with a case that the deceased was given injury on the neck by strangulation, he was found in the field of Vishwanath Singh while he was squirming and thereafter, he was carried to the house of informant and after about 5-10 minutes, he died. Accordingly, the prosecution case regarding causing death by strangulation by the appellants may not be believed.

28. Besides this, non-examination of the investigating officer has rightly prejudiced the case of the prosecution. In the case, the place of occurrence has not been established. The prosecution witnesses on the one side are stating that strangulation was done in the field of Vishwanath Singh and thereafter, injured was carried to the house of informant, however the inquest report was shown to be prepared in the field of Tunna Singh, opposite to house of the informant. No explanation has been given as to how the dead body was found in the field of Tunna Singh. In such situation, it would be difficult for the Court to approve the judgment of conviction and sentence.

29. Accordingly, in view of facts and circumstances, there is no reason to approve the judgment of conviction & sentence and as such, the judgment of conviction dated 27-09-2012 and order of sentence dated 01-10-2012 passed in



Sessions Trial No. 325 of 1997/106 of 2010 (arising out of Tandwa P.S. Case No. 15 of 1996) by Sri Vijay Kumar Pandey, learned Adhoc Additional Sessions Judge - II, Aurangabad is, hereby, set aside and appeal is allowed.

30. Appellant no. 1 & 2 namely Laxman Paswan and Janeshwar Paswan are on bail and since the judgment of conviction and sentence has been set aside, they are discharged from the liability of their bail-bonds. Remaining appellants i.e. Chhatan Paswan @ Chhatanz Paswan, Murari Paswan, Kedar Paswan and Fekan Paswan, who are in custody, are directed to be released forthwith, if not wanted in any other case.

(Rakesh Kumar, J.)

(Prakash Chandra Jaiswal, J.)

Anay

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.01.2019
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